Supreme Court

Workers' Compensation Court	:
Rules of Practice	:
(Proposed Amendments)	:

O R D E R

The Chief Judge of the Workers' Compensation Court has submitted to the Supreme Court for its consideration proposed amendments to the Workers' Compensation Court Rules of Practice which were drafted in accordance with G.L. 1956 (2003 Reenactment) § 28-30-12.

By Order dated January 24, 2013, this Court solicited written comments and requests to present oral commentary regarding the proposed rule changes at a public hearing scheduled for Wednesday, March 27, 2013 at 9:00 A.M. After careful examination, and having received no written comments or requests to present oral commentary on the proposed rule changes, the proposed amendments to the Workers' Compensation Court Rules of Practice are hereby approved by the Rhode Island Supreme Court.

Entered as an Order of this Court this 2nd day of ***April 2013***.

/s/
Suttell, C.J.

/s/
Goldberg, J.

/s/
Flaherty, J.

/s/
Robinson, J.

/s/
Indeglia, J.

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

WORKERS' COMPENSATION COURT

RULES OF PRACTICE

GEORGE E. HEALY, JR.

CHIEF JUDGE

WORKERS' COMPENSATION COURT

RULES OF PRACTICE

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WORKERS' COMPENSATION COURT

RULES OF PRACTICE

I. GENERAL RULES

1.1. ADOPTION OF RULES – APPLICATION. -- The provisions contained in these Rules of Practice shall take effect when approved by the Rhode Island Supreme Court, and shall be cited as W.C.C. -- R.P. These rules shall be applicable to all matters pending on the day of approval and such matters as may be filed with the Court thereafter.

Reporter's Notes. The Workers' Compensation Court Rules of Practice have been revised on several occasions to address statutory changes which have required rule revisions. The most recent amendments to the Rules were approved by the Rhode Island Supreme Court and became effective on ????????.

1.2. POWERS OF ADMINISTRATIVE JUDGE. -- Notwithstanding anything in these Rules of Practice to the contrary, the Chief Judge of the Workers' Compensation Court as the Administrative Judge, by virtue of Chapters 29 through 38 and Chapter 47 of Title 28 of the General Laws, as amended, shall continue to have and exercise the powers therein given.

1.3. AGREEMENTS AND STIPULATIONS. -- All agreements and stipulations of the parties, except those made orally on the record during the course of a hearing before a stenographer, shall be reduced to writing and properly captioned with the cause of action to which the same relates. A stipulation withdrawing a petition or a claim for trial shall be signed by all counsel of record and filed with the Court, except as otherwise provided in Rule 2.23. All other agreements and stipulations, in order to be binding, must be dated and signed by counsel of record and filed with the Court ~~Administrator's Office~~. If an agreement or stipulation is entered by a Judge of the Court, it will be deemed to have the same force and effect as an order of the Court. The Court, on its own motion or on the motion of any party, may strike any agreement or stipulation for just cause.

Reporter's Notes. This rule substantially reflects the present practice in effect before the Workers' Compensation Court. It should be noted that a stipulation withdrawing a petition or a claim for trial following the entry of a pretrial order must be signed by all counsel of record. While Chaves v. Robert E. Derecktor of Rhode Island, Inc., 569 A.2d 1063 (R.I. 1990), indicates that a claim for trial may be unilaterally withdrawn, this rule recognizes that a withdrawal prior to the entry of a final decree may constitute a successful defense of a petition on behalf of an employee which would require an award of costs, counsel and witness fees pursuant to R.I.G.L. § 28-35-32.

1.4. WITHDRAWAL OF ATTORNEYS. -- No attorney appearing in any case will be allowed to withdraw without the consent of the Court, except where another attorney enters an appearance at the time of such withdrawal. All other withdrawals shall be upon motion with reasonable notice to the party represented. No such motion shall be granted unless the attorney who seeks to withdraw shall file with the clerk the last known address of ~~his or her~~ her/his client, or the client files ~~his or her~~ her/his address, and in either situation the address which is filed shall be the official address to which notices may be sent. A motion for withdrawal shall be accompanied by an affidavit setting forth facts showing the military status of the client, or by a written statement of the client consenting to such withdrawal. No motion to withdraw an appearance will be granted if it appears that the client is in the military service of the United States, as defined in the Soldiers' and Sailors' Civil Relief Act of 1940, and any amendments thereto, unless the client consents thereto in writing, or another attorney enters as counsel of record at the time of such withdrawal.

1.5. RELIEF FROM ~~OF~~ ERROR IN DECREES OR ORDERS – CLERICAL MISTAKES. -- Clerical mistakes in decisions, decrees, orders or other parts of the record, and errors therein arising from oversight or omission, may be corrected by the Judge at any time on the Judge's own initiative or on the motion of any party filed before the decree is entered, and after such notice, if any, as the Judge orders.

Reporter's Notes. This rule is self-explanatory and modeled after Rule 60(A) of the Superior Court Rules of Civil Procedure. It also recognizes the procedure outlined in W.C.C. – R.P. 2.20 which provides that all parties will be provided seventy-two (72) hours notice before a decree may be entered. It is anticipated that all clerical errors will be recognized and brought to the attention of the Court prior to the time any proposed order or decree is entered. This rule also anticipates that errors which are brought to light following the entry of the decree may be corrected by the Judge who entered the original decree if it ~~truly~~ involves a ~~purely~~ clerical error, and in all other situations, would be subject to review by the Appellate Division of the Workers' Compensation Court.

II. TRIAL

2.1. ~~(A)~~ CALENDAR. -- (A) The Chief Judge shall designate a pretrial calendar as necessary to expedite the disposition of cases as outlined in R.I.G.L. § 28-35-20(a). All cases filed with the Court, excluding (1) appeals from the Department of Labor and Training, ~~and~~ (2) appeals from the Medical Advisory Board, (3) requests for anniversary reviews, (4) petitions for settlement pursuant to R.I.G.L. § 28-33-25 and § 28-33-25.1, and (5) petitions to determine a controversy involving disputes under the coverage provisions of an insurance policy filed pursuant to R.I.G.L. § 28-30-13, shall be assigned to pretrial conference by the Court and placed on the

pretrial calendar for a day certain on or before the twenty-first (21st) day from said filing. The Administrator shall notify the parties of the date of said assignment.

(B) In the event that a petition is withdrawn without prejudice by stipulation or dismissed without prejudice by the Court, ~~such~~ said petition shall be referred back to the Judge previously assigned to hear the matter if the petition is filed again within one (1) year of the withdrawal or dismissal.

Reporter's Notes. This recognizes the expanded jurisdiction of the Court following the 1992 Workers' Compensation Reform Legislation (P.L. 1992, Ch. 31). The Court is now required to review the decisions of the Medical Advisory Board regarding the discipline of health care providers under R.I.G.L. § 28-30-22(e) and the determinations of the Department of Labor and Training relating to employers' failure to maintain insurance coverage. In such situations, the Court's review is focused on the record of the proceedings before the administrative body and a pretrial conference under those circumstances would appear superfluous.

The elimination of the pretrial conference in cases where the Court is requested to conduct an anniversary review pursuant to the provisions of R.I.G.L. § 28-33-46 also reflects a practical approach to the statute. Since the anniversary review anticipates the compilation of numerous medical records prior to action by the Court, the twenty-one (21) day pretrial conference would be counter-productive.

The provision in this rule that petitions for settlement filed under R.I.G.L. § 28-33-25 need not be assigned for pretrial conference is in compliance with long-standing practice and also recognizes the basic purpose of R.I.G.L. § 28-35-20. Since petitions for settlement are not ~~technically~~ adversarial, there should be no issues in dispute and, therefore, no necessity for a pretrial conference or pretrial order.

~~Additionally, the provisions of W.C.C. – R.P. 2.26 establish provisions to ensure that no issues remain in dispute at the time a petition for the approval of a settlement is filed granted.~~

The most recent amendment to this rule ~~similarly~~ reflects the longstanding practice of the Court which was implemented to prevent a petitioner from accepting a dismissal without prejudice in order to shift the matter in dispute to another Judge of the Court.

2.2. HEARING. -- When reached, the Judge to whom the pretrial conference has been assigned shall conduct the pretrial conference in conformance with R.I.G.L. § 28-35-20(c).

2.3. PRETRIAL CONFERENCE – FAILURE TO APPEAR. -- (A) In the event that a party, after proper notice, fails to appear at the pretrial conference, the ~~Trial~~ Judge before whom the matter is being heard may, in her/his discretion, enter a pretrial order granting, denying or

dismissing the petition. Dismissals may be with or without prejudice. Any pretrial order so entered shall contain a finding that the absent party, with due notice, failed to ~~attend~~ appear.

(B) Relief from Pretrial Order. -- ~~Where~~ After a pretrial order has been entered by ~~the court~~ the Judge following a party's failure to appear, the ~~court~~ Judge may, on motion and upon such terms as are just, relieve a party from any order which has been entered pursuant to R.I.G.L. § 28-35-20 for the following reasons: (1) mistake, inadvertence, surprise or excusable neglect; (2) fraud, misrepresentation or other misconduct of an adverse party; (3) the pretrial order is void; (4) the orders have been previously satisfied, released, or discharged; or (5) any other reason justifying relief from operation of the pretrial order. The motion shall be filed within a reasonable time and not more than six (6) months after the date on which the pretrial order was entered. A motion under this rule does not affect the finality of the pretrial order or suspend its operation.

Reporter's Notes. This rule varies substantially from the practice in other courts and acknowledges the requirements imposed by R.I.G.L. § 28-35-20 on the Court with reference to the pretrial conference. It also recognizes that in proceedings before the Workers' Compensation Court, service of process on the respondent is~~, in fact,~~ effectuated by the Court. (*See* R.I.G.L. § 28-35-14, § 28-35-15, § 28-35-17). In those cases where a party fails to appear, the Court may, in its discretion, allow the appearing party to proceed and may thereafter enter an order adverse to the absent party.

W.C.C. -- R.P. 2.3(B) is modeled after Rule 60(b) of the Superior Court Rules of Civil Procedure, but limits the time within which to file a motion seeking relief from a pretrial order to a period not to exceed six (6) months from the date the pretrial order was entered. Since an unappealed pretrial order ripens into a decree under the provisions of R.I.G.L. § 28-35-20, review of such a decree alleging fraud is governed by R.I.G.L. § 28-35-61, which requires that any petition alleging that a decree has been procured by fraud must be filed within six (6) months of the date such decree was entered. This rule is therefore modified to reflect that statutory time constraint.

2.4. INITIAL HEARING. -- In all matters in which a claim for trial has been filed following the entry of a pretrial order, the Court may conduct an initial hearing in order to reduce the issues in dispute and to arrange a trial and briefing schedule.

No oral testimony shall be taken at the initial hearing, however, the hearing may be on the record at the discretion of the Trial Judge and all agreements made shall be binding. All documentary evidence, including depositions and medical affidavits, which the parties intend to introduce ~~in connection with the~~ at trial shall be identified or submitted at the time of the initial hearing. All motions to compel production filed by either party in accordance with W.C.C.-- R.P. 2.17 shall be heard on the record or resolved by stipulation, at the discretion of the Trial Judge, at the time of the initial hearing. The Trial Judge shall rule on any objections ~~interposed~~ to the production of documents ~~during the course of~~ at the initial hearing. If there are any subsequent requests for production or objections raised during the course of the trial, such

requests shall be heard at a time scheduled by the Trial Judge. The parties shall ~~designate~~ identify any ~~expert~~ witnesses whom they intend to testify before the Court and provide three (3) dates upon which ~~the~~ each witness is available to testify. The parties shall, at the request of the Trial Judge, designate trial counsel.

~~At the time of initial hearing, counsel for all parties shall submit a joint filing which shall certify that they have conferred in good faith to attempt to resolve the disputed issues prior to the time of initial hearing.~~

The initial hearing ~~may~~ shall not be waived without leave of the ~~Court~~ Trial Judge. In the event that a party fails to appear at the initial hearing, the ~~Court~~ Trial Judge may enter orders adverse to the party so failing to appear and/or impose other sanctions deemed appropriate.

Reporter's Notes. This rule is intended to assist the Court and counsel in scheduling trial calendars. R.I.G.L. § 28-35-17(b) mandates that following a claim for trial, the Court shall schedule an initial hearing within thirty (30) days of the date the claim for trial is filed. The decision to utilize the initial hearing is left to the discretion of the Trial Judge but, in those cases where the initial hearing is held, this rule sets forth the procedure to be utilized. Since counsel are expected to identify or present affidavits and other documentary evidence at the time of the initial hearing, it is anticipated that motions for protective orders filed pursuant to W.C.C. – R.P. 2.13(B)(3) will be filed and heard at the time of the initial hearing. The most recent amendments to this rule address discovery practices which have emerged in the Court and allows the Trial Judge to expedite the discovery process and move the matter to trial as soon as practical. ~~Finally, the certificate requires the parties to actually confer prior to the date of the initial hearing in the effort to reduce the issues in dispute to a minimum and to file an affidavit reflecting this fact.~~

2.5. DOCKETING. -- All cases shall be docketed and numbered consecutively by year.

2.6. TRIAL DATES. -- Cases ~~may~~ shall be assigned for trial on any day, Monday through Friday, of each week of the year; except that no cases shall be assigned to a legal holiday or such other days as the Court shall set.

2.7. CONTINUANCE. -- All motions for continuances shall be ~~heard by the Judge to whom the case is assigned; motions for continuances shall be addressed to the sound discretion~~ granted or denied in the discretion of the Judge assigned to hear the case. The Judge shall give due regard to the policy of the Court to provide prompt and speedy trials. No continuance will be granted without good cause.

2.8. CONTINUED CASE STATUS. -- ~~All attorneys having a continued matters on the calendar shall present themselves before the Judge to whom the matter has been assigned or the Judge's clerk between 8:30 A.M. and 9:30 A.M. on the day assigned and apprise the Judge~~

~~and/or the Judge's clerk as to the status of the particular matter before the Judge on that day.~~ All attorneys having a continued matter scheduled for hearing between 8:30 A.M. and 12:30 P.M. shall present themselves between 8:30 A.M. and 10:00 A.M. on the day assigned for hearing and apprise the Judge and/or the Judge's clerk as to the status of the particular matter before the Judge on that day. All attorneys having a matter scheduled for hearing between 2:00 P.M. and 4:30 P.M. shall present themselves no later than 1:30 P.M. on the day assigned for hearing to apprise the Judge and/or the Judge's clerk as to the status of the matter.

2.9. EXCUSAL OF ATTORNEY. -- No attorney shall be excused from attendance at the Court except upon application to the Chief Judge, or her/his designee ~~the Judge designated to act in the absence of the Chief Judge~~, and such excuse from attendance shall be granted on such terms and conditions as the Court may deem proper ~~set, including notice of such request to be excused to attorneys of record in all pending cases assigned during the respective excuse period~~. All motions to be excused shall ~~contain a statement that the attorney requesting to be excused has spoken to all Judges on whose calendar he or she has a case scheduled for trial during the period of excusal, and that the Judge or Judges spoken to do not object to the request to be excused.~~ :

(1) List the file number, caption and Trial Judge of every case assigned during the period for which the excuse is sought and the name of the attorney of record for each of the adverse parties;

(2) Contain a statement that the attorney requesting the excusal has received permission from each Judge on whose calendar s/he has a case scheduled for hearing during the period of excusal; and

(3) Contain a certification that the attorney requesting the excusal has notified all attorneys of record, or parties if not represented, in all pending cases assigned during the requested period of excusal at least forty-eight (48) hours prior to the filing of the request for excusal and has not received any notice of an objection from any party.

Said motion, if granted, ~~shall~~ will not result in a continuance ~~of any cause in which~~ unless counsel of record ~~have not~~ has been notified as ~~above~~ provided above. All requests for excusal shall be submitted no later than fifteen (15) days prior to the commencement of the period for which excusal is sought.

An attorney of record for an adverse party who objects to the motion to be excused shall file an objection with the Chief Judge, or her/his designee, immediately upon receipt of said motion. The Chief Judge, or her/his designee, shall conduct a hearing on the objection.

In case of the sudden illness of an attorney, or the attorney's absence from a hearing for some other imperative and unforeseen cause, a Judge shall take such action, without notice, as shall appear reasonable ~~in~~ under the circumstances.

Reporter's Notes. This rule was amended to ensure that an attorney seeking to be excused from appearing at the Court has notified all Judges and opposing parties involved in any matter scheduled for hearing during the excusal period that s/he is seeking to be excused.

The rule also provides a mechanism for an opposing party to object to a request for excusal.

2.10. EXAMINATION AND CROSS-EXAMINATION. -- The examination and cross-examination of any witness shall be conducted by only one (1) attorney for each party. The attorney shall stand while so examining or cross-examining, ~~or~~ and while addressing the Judge, unless, for satisfactory reasons, the Judge presiding at the trial shall suspend this rule in a particular case.

2.11. SUBPOENA FOR ATTENDANCE OF WITNESSES -- FORMS -- ISSUANCE. -- Every subpoena shall be issued either by the Court ~~Office of Administrator~~, a Notary Public, any officer authorized by statute, or the attorney of record. It shall state the name of the Court and the title of the action, and shall command each person to whom it is directed to attend and give testimony at a time and place therein specified, and/or it may also command the person to whom it is directed to produce the books, papers, documents, or tangible things designated therein; but the Court may, upon motion made promptly, and in any event, at or before the time specified in the subpoena for compliance therewith, ~~may~~ quash or modify the subpoena if it is unreasonable and/or unduly burdensome.

2.12. SERVICE OF SUBPOENA. -- A subpoena may be served by a sheriff, ~~by~~ a deputy, ~~by~~ a constable, or ~~by~~ any other disinterested person over the age of eighteen (18) years. Service of a subpoena upon a person named therein shall be made by delivering a copy thereof to such person and ~~by~~ rendering to them the fees for one (1) day's attendance and the mileage allowed by law. When the subpoena is issued on behalf of the State or an officer or agency thereof, fees and mileage need not be tendered. A subpoena may be served at any place within the State.

2.13. DEPOSITIONS IN PENDING ACTIONS. -- (A)(1) Any party may take the testimony of any person, including a party, by deposition upon oral examination for the purpose of discovery or use as evidence in the trial of the action. The deposition may be taken without leave of the C~~c~~ourt provided that notice is given to the opposing party no less than seven (7) days prior to the taking of the deposition, or if the parties agree to the taking of the deposition, upon shorter notice. The attendance of ~~witnesses~~ a deponent may be compelled by the use of a subpoena ~~subpoenas~~. The deposition of a person confined in prison may be taken only by leave of the C~~c~~ourt on such terms as the Court prescribes.

(2) In the event that a party files a notice of deposition of an expert witness and indicates in said notice that the deposition is to be taken for use at trial, the failure of a party or ~~his/her/its~~ their attorney to appear at the deposition after proper notice shall be deemed a waiver of the right to examine or cross-examine the deponent and shall be deemed a waiver of the right to object to the admissibility of the deposition transcript at trial.

(3) Objections made during a deposition which is introduced into evidence at trial shall be deemed waived unless the objecting party requests a ruling by the Trial Judge on a specific objection prior to the admission of the deposition into evidence.

(B) Orders for the Protection of Parties and Deponents. -- (1) Objections to the taking of a deposition and motions for protective orders must be filed at least forty-eight (48) hours prior to the scheduled time of the deposition.

(2) After notice is served for taking a deposition by oral examination, upon motion or objection timely filed ~~made~~ by any party or by the person to be examined, and upon notice and for good cause shown, the Court may make an order that the deposition shall not be taken, or that it may be taken only at some designated time or place other than that stated in the notice, or that it may be taken only on written interrogatories, or that certain matters shall not be inquired into, or that the scope of the examination shall be limited to certain matters, or that the examination shall be held with no one present except the parties to the action and their officers or counsel, or that the deposition be sealed and opened only by order of the Court or such other conditions as the Court deems appropriate.

(3) The Court may, in its discretion, upon motion after notice is given of the intention to submit medical evidence by affidavit pursuant to R.I.G.L. § 9-19-27, ~~or objection to an Impartial Medical Examination report seasonably made,~~ require the party seeking to take the deposition of the expert witness or other party to pay the costs incurred in the taking of the deposition including a reasonable expert witness fee or such other conditions as the Court deems appropriate.

(4) The power of the Court under this rule shall be exercised with liberality toward the accomplishment of its purpose to protect parties and witnesses.

Reporter's Notes. This rule recognizes prior practice before the Court and the strong reliance of the Court and the litigants on the use of the deposition to present the testimony of expert witnesses. The rule has been modified somewhat in order to standardize the practice in those cases where a party is seeking to take the deposition of an expert witness for use as evidence. W.C.C. – R.P. 2.13(A)(2) requires the party taking the deposition to state in the notice of deposition that the testimony is being taken for use at trial. When such notice is given, the burden shifts to the adverse party to appear at the deposition and voice any objections to the admission of the deposition as evidence. In the event that a party fails to appear or fails to voice any objection, ~~such absence~~ s/he shall be deemed ~~a waiver of~~ to have waived any objection to the admission of the deposition on the grounds of hearsay. ~~The rule also anticipates that any other objections not waived by the party's failure to appear may still be raised and ruled upon by the Trial Judge.~~

W.C.C. -- R.P. 2.13(A)(3) establishes a standardized procedure to address evidentiary objections made during the deposition of a witness. Such objections are deemed waived unless the objecting party requests a ruling from the Trial Judge prior to the deposition being admitted into evidence.

W.C.C. – R.P. 2.13(B)(3) ~~is new and slightly modifies~~ addresses the ruling of the ~~R.I.~~ Rhode Island Supreme Court in Gerstein v. Scotti, 626 A.2d 236 (R.I. 1993), with reference to the payment of an expert witness fee. While the rule still requires the proponent of an affidavit to pay the fees charged by the expert witness for the first hour of cross-examination in most cases, it also recognizes the economic disparity which may exist between the employer and employee in workers' compensation litigation. This rule allows a party offering an affidavit to seek a protective order where the exercise of the right of cross-examination could result in the exclusion of the affidavit due to the inability of a party to pay the expert witness fee in advance. It is anticipated that in ruling on a motion for a protective order filed under this section, the Court will assess and attempt to balance the interests of all parties utilizing the guidelines enunciated by the ~~R.I.~~ Rhode Island Supreme Court in Martinez v. Kurdziel, 612 A.2d 669 (R.I. 1992). This procedure also allows the Court to shift the expenses of cross-examination in those cases where it is determined that a party's exercise of the right will prove unduly burdensome to the other party. Finally, this rule recognizes the unique situation which arises in workers' compensation cases under the provisions of R.I.G.L. § 28-35-32. This ~~section~~ statute requires that the employer shall pay costs, counsel fees, and witness fees to an employee who is successful in prosecuting or defending a petition before the Court. Since the employee may ultimately be entitled to recoup expert witness fees where a case is successfully prosecuted or defended, the shifting of these costs prior to that time where justice so requires does not seem particularly onerous.

The rule was amended by deleting reference to the costs of cross-examining an impartial medical examiner appointed by the Court in order to make it consistent with the language of R.I.G.L. § 28-33-35(b) which states that the party contesting the impartial medical examiner's findings shall bear the cost of the appearance of the examiner.

2.14. DEFAULT -- REFUSAL TO MAKE DISCOVERY -- CONSEQUENCES. -- (A) If a party, or an officer or managing agent of a party, without good cause, fails to appear for his or her deposition after being served with proper notice, the Trial Judge, on motion, may make such orders in regard to the failure as are just, including but not limited to: (a) dismissing the petition or entering orders adverse to that party, or (b) requiring the party to submit to her/his deposition at a time and place set by the ~~court~~ Trial Judge, and to pay the reasonable expenses incurred in reconvening the deposition, including reasonable attorneys' fees.

(B) If a party or other deponent refuses to answer any question propounded upon oral examination, the examination shall be completed on other matters or adjourned as the proponent of the question may prefer. Thereafter, on reasonable notice to all persons affected thereby, the proponent may apply to the ~~Court~~ Trial Judge for an order compelling an answer. If said motion is granted, the ~~Court~~ Trial Judge shall order the party to submit to further examination under such circumstances as ~~the Court may deem~~ deemed just.

2.15. ARGUMENT. -- Argument at the conclusion of the testimony in any hearing may be requested by either party, and if granted, shall be limited at the discretion of the Trial Judge. When more than one attorney is to be heard on the same side, the time may be divided between them as they may elect. The Trial Judge may request proposed findings of fact from the parties.

2.16. AMENDMENT OF PLEADINGS. -- The ~~Court~~ Trial Judge shall, in ~~its~~ her/his discretion, allow amendments to any of the pleadings in a ~~cause~~ case at any time prior to the rendering of a decision.

2.17. MOTIONS. -- ~~Motions shall be addressed to and heard at the discretion of the Trial Judge.~~ All motions, except motions to amend the pleadings, shall be in writing and filed with the Court, and heard at the discretion of the Trial Judge. The moving party shall promptly deliver a copy ~~thereof~~ of the motion and notice of hearing ~~delivered~~ to the opposing party.

2.18. NOTICE OF FILING. -- When an attorney enters ~~his or her~~ her or his appearance on behalf of ~~the~~ a party to a pending action, all subsequent petitions involving the same parties or the same matter in controversy shall be mailed to all counsel of record by the attorney filing the subsequent petition or petitions, so long as there is litigation between the parties pending before the Court.

2.19. NOTICE OF DECISIONS. -- In any matter heard and decided by the Court, ~~The~~ the Office of the Administrator shall forward to all attorneys of record a copy of the decision and proposed decree or, in the event that the Trial Judge renders a bench decision, a notice of decision and copy of the proposed decree. ~~in any matter heard and decided by the Court. In the event that the Trial Judge renders a bench decision, the Office of Administrator shall forward a notice of decision and copy of the proposed decree to all parties of record in accordance with this rule. Such notice shall be transmitted by the Office of Administrator to the attorneys of record. In cases where there is no attorney of record, notice shall be given to the parties by mailing said notice by regular mail to the address set forth in the docket.~~ In the event that a party is not represented by counsel, the aforementioned documents shall be mailed by first class mail to the unrepresented party at her/his address as set forth in the docket.

2.20. DECREES. -- The Court shall prepare an appropriate decree and a copy thereof, and present the same for entry within the time provided by law. A copy of the proposed decree shall be mailed to the attorneys of record and any unrepresented parties at least seventy-two (72) hours prior to entry thereof, and an appropriate certificate to that effect shall appear on the decree presented for entry.

2.21. TESTIMONY. -- The testimony of all parties and witnesses before a Judge shall be given under oath or affirmation and governed by the Rhode Island Rules of Evidence except as modified by these Rules.

2.22. PETITIONS. -- (A) All petitions to review, petitions to enforce, and petitions to adjudge in contempt, and each copy thereof required to be filed, shall be accompanied by a legible copy of the appropriate agreement, order, and/or decree sought to be reviewed or enforced. The ~~Administrator's~~ Office of the Administrator shall not accept any petition which is not filed in accordance with this rule. In the event any such petition is accepted by the ~~Administrator's~~ Office of the Administrator, it shall be subject to being dismissed without prejudice for failure to be in proper form.

(B) All petitions seeking payment of bills for medical services rendered, and each copy thereof required to be filed, shall be accompanied by a legible copy of the bill, the report upon which the bill for services is based and, if liability has been established, a legible copy of the agreement, order, and/or decree sought to be reviewed. All such petitions shall also be accompanied by an affidavit of a treating or consulting doctor that the service provided was necessary to cure, rehabilitate or relieve the person to whom the service was rendered of the effects of the injury set forth in the agreement, order, and/or decree under review. The ~~Administrator's~~ Office of the Administrator shall not accept any petition which is not filed in accordance with this rule. In the event any such petition is accepted by the ~~Administrator's~~ Office of the Administrator, it shall be subject to dismissal without prejudice for failure to be in proper form.

2.23. DISMISSAL/WITHDRAWAL OF ACTIONS. -- (A) Voluntary Discontinuance – Effect Thereof. -- (1) ~~BY PETITIONER, BY STIPULATION~~ By Stipulation. -- A proceeding may be discontinued by ~~the petitioner~~ a party without order of the Court by (i) ~~by~~ filing a stipulation at any time before the adverse party has filed an answer or entry of appearance, or (ii) ~~by~~ filing a stipulation ~~of discontinuance~~ signed by all parties who have appeared in the proceeding.

(2) ~~BY ORDER OF COURT~~ By Order of the Court. -- Except as provided in paragraph (1) of this section, a proceeding shall not be discontinued, nor a claim for trial withdrawn, at a party's insistence save upon order of the Court after hearing, and upon such terms and conditions as the Court deems proper. Unless otherwise specified in the order, a dismissal under this paragraph is without prejudice.

(B) Involuntary Dismissal – Effect Thereof. -- (1) ~~BY COURT~~ By the Court. -- The Court may, in its discretion, dismiss any proceeding for lack of prosecution on its own motion.

(2) On Motion of the Respondent. -- On motion of the respondent, the Court may, in its discretion, dismiss any action for lack of prosecution as provided in paragraph (B)(1) ~~of this subdivision~~ above.

(3) Effect. -- Unless the Court in its order for dismissal otherwise specifies, a dismissal under ~~this subdivision~~ paragraphs (B)(1) and (2) shall be with prejudice.

2.24. REPORTS OF COURT-APPOINTED IMPARTIAL MEDICAL EXAMINERS. -- The report of the findings of ~~the~~ a court-appointed impartial medical examiner and/or a comprehensive independent health care review team shall be admissible as an exhibit of the Court. The Court shall provide copies of the report to the parties or their attorneys upon receipt. If a party elects to contest the findings of the report, notice of contest must be filed with the Court within ten (10) days of receipt of the report. A notice of deposition to depose the impartial medical examiner, a subpoena issued to the examiner to appear in court at the next scheduled hearing, or a notice of objection signed by the contesting party and filed with the Court, shall constitute a notice of contest as required by ~~section~~ R.I.G.L. § 28-33-35 if filed with the Court within ten (10) days of receipt of the report. The contesting party shall pay the cost of the deposition of the examiner, including any reasonable fee to the examiner, or the cost of the appearance of the examiner to testify before the Court~~, subject to the procedure set forth in W.C.C. R.P. 2.13(B)(3)~~. If after hearing, the employee has successfully prosecuted her/his petition or has successfully defended, in whole or in part, any employer's petition, the employer shall reimburse the employee for the entire cost of the deposition or testimony of the author of the report, including any expert witness fee.

Reporter's Notes. This rule reconciles several different statutory provisions regarding the appointment and use of the impartial medical examiner. The appointment of an impartial medical examiner to examine an employee and to provide advice on the employee's medical status can occur at several points in a workers' compensation case. ~~Under the provisions of R.I.G.L. § 28-33-34.1, any~~ employee who has received compensation benefits for more than six (6) months must submit to an impartial medical examination arranged by the administrator of ~~the Medical Advisory Board even though no petition is pending before the Court. In addition, The Court has retained the authority to appoint an impartial medical examiner to assist in resolving disputed medical questions. These rules also envision the appointment of an impartial health care review team to assist the Court when a request for an anniversary review is filed with the Court. Finally, T~~the Court is authorized to order an impartial medical examination pursuant to R.I.G.L. § 28-34-5, § 28-35-22, and § 28-35-24. While most of these provisions are silent regarding the procedure to be followed to preserve a party's right of cross-examination of the author of the report, R.I.G.L. § 28-33-35 imposes a duty on any party contesting the report of the impartial examiner to file a "Notice of Contest" within ten (10) days of the receipt of the report.

The rule promulgated by the Court recognizes the value of adopting a uniform procedure to ensure a party's right of cross-examination and applies the rule to all situations where an impartial examination is held. The rule also liberally interprets the term "Notice of Contest" to include any document or pleading designed to apprise a party and the Court that the objecting party intends to preserve the right to cross-examine the author of the report.

The rule has been amended to delete reference to the procedure set forth in W.C.C. -- R.P. 2.13(B)(3) regarding shifting the costs of deposing expert witnesses in order to be consistent with the language of R.I.G.L. § 28-33-35 which states that the party contesting the findings of the impartial medical examiner shall pay the cost of the appearance of the examiner.

2.25. AFFIDAVIT OF THE TREATING PHYSICIAN. -- The affidavit of the treating physician shall be admissible as an exhibit of the ~~Workers' Compensation~~ Court if presented in accordance with the provisions of R.I.G.L. § 9-19-27 and § 9-19-39, with or without the appearance of the affiant. Both parties retain the right to examine or cross-examine the physician by deposition or in court, subject to the procedure set forth in W.C.C. – R.P. 2.13(B)(3).

2.26. SETTLEMENTS. -- (A) PROCEDURE FOR LUMP SUM SETTLEMENT OR STRUCTURED-TYPE PAYMENT ~~AND SETTLEMENT OF DISPUTED CASES~~. --

(1) Every petition for approval of a lump sum settlement or structured-type payment shall set forth the pertinent facts, including but not limited to, the ~~nature~~ date of the injury, a description of all injuries, the ~~length~~ periods of incapacity totaling at least six (6) months, the settlement amount, the amounts of any liens, the amount of any Medicare set-aside, any settlement structure, and whether the medicals will be left open ~~the names and addresses of all medical care providers who have treated the employee, as distinguished from examining physicians, and the calculation of the settlement amount~~.

(2) The following documents shall be attached to the petition at the time of filing, and the Office of the Administrator shall not accept any petition for filing unless accompanied by all necessary documents:

(a) ~~A legible copy of the outstanding or most recent agreement or decree or order of the Court pursuant to which weekly benefits were paid to the employee, as well as a copy of the agreement or decree which established initial liability for the injury or injuries which is/are the subject of the proposed commutation. It must be established at the time of hearing on the petition that the employee has received payments for not less than six (6) months prior to the date of the filing of the petition for approval of the settlement.~~ Legible copies of all agreements, orders, and decrees establishing liability for the injury or injuries, the weekly compensation rate, the periods and degree of incapacity, and the receipt of specific compensation.

(b) A statement, dated within thirty (30) days of the date of the filing of the petition, on the letterhead of and signed by the physician who is currently treating the employee for the injury for which the employee is receiving compensation, describing the employee's present ~~physical~~ medical condition and ability to return to the workforce ~~insofar~~ as it relates to the work-related injury ~~and containing an unequivocal statement as to the employee's ability to work or lack thereof~~; or in the event that the employee is no longer treating, ~~a~~ the medical report of the employee's last date of treatment, describing the employee's medical condition and ability to return to the workforce as it relates to the work-related injury accompanied by an affidavit signed by the employee or her/his attorney attesting that the employee is no longer treating ~~from the physician with whom the employee last treated indicating the employee's condition as of the date~~

~~of the last treatment, including the employee's physical condition at that time insofar as it related to the work-related injury and containing an unequivocal statement as to the employee's ability to work or lack thereof at that time~~.

(c) ~~An affidavit of the attorney of record for the employer or a copy of the letter mailed to the employer establishing that the employer, as distinguished from the insurer, has been notified~~ A copy of correspondence notifying the employer, as distinguished from the insurer, of the details of the proposed settlement, and of its right to be heard thereon. Failure of the employer to appear at the hearing following receipt of sufficient notice shall be deemed a waiver of the employer's right to be heard.

(d) ~~An affidavit of an individual having personal knowledge of such fact or a copy of a letter to the employer, establishing that the employer, as distinguished from the insurer, has been advised~~ A copy of correspondence notifying the employer, as distinguished from the insurer, of the potential effect of the proposed settlement on its workers' compensation insurance premium.

(e) ~~Copies of all~~ The report from the most recent impartial medical examination~~s~~ performed at the direction of the Medical Advisory Board and/or the Court.

(f) A statement listing all ~~medical service~~ health care providers known to the parties who have provided any services to the employee and a list of balances owed for treatment.

(g) An original and one (1) copy of the proposed order and final decree.

(3) Any dispute as to the reasonableness of any charge for medical services shall be brought to the attention of the Judge hearing the petition who may, in her/his discretion (a) conduct a hearing pursuant to R.I.G.L. § 28-35-20 et seq., to address the charges in dispute; (b) continue the hearing on the petition for ~~commutation~~ settlement until the dispute is resolved; or (c) dismiss the petition for settlement without prejudice.

(4) The petition shall be considered by a Judge of the Court and may be granted where it is shown to the satisfaction of the ~~court~~ Judge that the payment of a lump sum ~~of~~ or structured-type payment in lieu of future weekly payments will be in the best interest~~s~~ of ~~all~~ the parties, including the employee, employer, and insurance carrier.

(5) ~~The fees of the attorney for the employee shall be approved by the Judge and the amount of such fees shall be stated in the decree.~~ The Judge shall determine the fees and costs of the employee's attorney in accordance with R.I.G.L. § 28-33-25, which shall be set forth in the order and decree.

(6) If~~, after hearing in open Court, it is determined~~ the Judge determines after hearing on the record that the proposed settlement is in the best interest of all parties, the ~~Trial~~ Judge shall enter an order so finding and directing that ~~commutation payments so ordered shall be made~~ the lump sum shall be paid within fourteen (14) days of the ~~date of the hearing~~ entry of the order. The ~~Trial~~ Judge shall ~~in his/her order~~ schedule a hearing date for the entry of a final decree

following entry of the order. In the case of a structured-type settlement, payment shall commence in accordance with the terms of the settlement agreement.

(7) On the date and time set by the ~~Trial~~ Judge, the parties shall appear and submit a final decree for entry by the Court. The decree ~~presented~~ shall contain an agreement signed by all counsel that all payments ordered at the time of the ~~commutation~~ approval of the settlement have been made and that all ~~medical~~ health care expenses incurred in the care and treatment of the ~~employee by the medical service providers listed on the statement filed pursuant to W.C.C. – R.P. 2. 26(2)(f)~~ employee's work-related injuries which are the subject of the settlement have been paid.

~~The final decree shall fully and finally absolve the employer from all future liability to the employee under the terms of the Workers' Compensation Act.~~

(8) Any pending petitions regarding the work-related injury which is the subject of the settlement must be withdrawn or otherwise resolved prior to the entry of the order approving the settlement.

(9) Petitions seeking approval of settlements with open medicals must be filed utilizing the forms promulgated by the Court.

(10) Petitions for settlement with open medicals shall be heard no sooner than one (1) week after the petition is filed with the Office of the Administrator.

Reporter's Notes. The amendment to this rule recognizes recent changes in the Medicare Rules and Regulations that may require an employee to set aside a certain portion of the settlement proceeds to satisfy any potential obligation to Medicare for medical expenses for treatment of the work-related injury. The rule also addresses settlements in which the employer/insurer remains liable for future medical expenses for treatment of the work-related injury.

(B) PROCEDURE FOR SETTLEMENT OF DISPUTED CASES. -- (1) Every petition for approval of a settlement of a disputed claim pursuant to R.I.G.L. § 28-33-25.1 shall ~~contain a recitation of the~~ set forth the pertinent facts of the case, ~~and the form and~~ the amount of the proposed settlement, including the net amount to be realized by the employee, and, if applicable, the amount of any liens, the amount of any Medicare set-aside, and any settlement structure ~~under the terms of the proposed settlement~~.

(2) The petition shall be considered by a Judge of the Court and may be granted where it is shown to the satisfaction of the Judge that the settlement proposal is in the best interest of the parties, including the employee, employer and insurance carrier.

(3) If the Judge determines after hearing on the record that the proposed settlement is in the best interest of all parties, the Judge shall enter an order granting the settlement and enter a decree denying and dismissing the petition with prejudice.

(4) The parties shall provide an original and one (1) copy of the proposed order and decree.

In all settlement proceedings, the parties shall use forms, pleadings, and settlement documents promulgated by the Court when such forms exist.

Reporter's Notes. This rule is designed to standardize the practice of the Court regarding petitions for approval of settlement. The 1992 Reform of the Workers' Compensation Act (P.L. 1992, Ch. 31) eliminated a unilateral petition to commute future benefits and authorized the Court to hear petitions for approval of a settlement only when they are filed jointly. This rule, recognizing that such petitions are ~~now~~ filed only when the parties have agreed to settle a case, ~~now~~ requires that the parties submit sufficient documentary evidence with the petition to allow the Court to review the matter and determine if the proposed settlement meets the standard enunciated in R.I.G.L. § 28-33-25.

This rule also recognizes the ~~recent~~ statutory amendment requiring that all settlement payments approved by the Court must be paid within fourteen (14) days of the date the order is entered and requires the parties to appear and present a pleading indicating that all required payments have been made prior to the entry of a decree ~~discharging the employer from all future liability~~ approving the settlement. It is anticipated that the ~~use of this~~ rule will virtually eliminate ~~all~~ petitions which ~~now~~ are filed after a settlement has been approved alleging a failure to make payments under the terms of the Act.

2.27. NOTICE OF INTENT TO DISCONTINUE – WAGE TRANSCRIPT. -- Upon the filing of an objection to a notice to discontinue, suspend, or reduce payments of compensation based on an allegation that the employee has returned to work at an average weekly wage equal to or in excess of that which s/he was earning at the time of the injury pursuant to R.I.G.L. § 28-35-47, the Director of the Department of Labor and Training shall forward a copy of the notice of intent, a copy of the wage transcript and a copy of the objection to the notice of intent to the Workers' Compensation Court. Upon receipt, the ~~Workers' Compensation~~ Court shall schedule a pretrial ~~hearing~~ conference pursuant to R.I.G.L. § 28-35-20 ~~of the Workers' Compensation Act~~.

2.28. ~~(A)~~ SIGNING OF PLEADINGS, MOTIONS, AND OTHER PAPERS -- SANCTIONS. -- (A) ~~Every pleading, written motion, and other paper of a party represented by an attorney shall be signed by at least one attorney of record in the attorney's individual name, whose address and telephone number shall be stated.~~ All attorneys of record shall include their name, address, bar number, telephone number, and signature on all pleadings, motions, and other papers filed with the Court. A party who is not represented by an attorney shall sign ~~the party's~~ their pleading, motion, or other paper and state ~~the party's~~ her/his name, address, and telephone number. The signature of an attorney or party ~~constitutes a certificate by the signer~~ certifies that the signer has read the pleading, motion, or other paper; that to the best of the signer's knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact

and is ~~warranted~~ supported by existing law or a good faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or a needless increase in the cost of litigation. If a pleading, motion, or other paper is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the pleader or movant. If a pleading, motion, or other paper is signed in violation of this rule, the Court, upon motion or upon its own initiative, after hearing, may impose upon the person who signed it, a represented party, or both, any appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion, or other paper, including a reasonable attorney's fee.

(B) All proceedings for costs, expenses, reasonable attorney's fees and/or penalties to be assessed for delay or inaction without just cause pursuant to R.I.G.L. § 28-35-17.1 or § 28-33-17.3, or for sanctions pursuant to section (A) of this rule, shall be heard by the Trial Judge at such time as ~~he or she~~ s/he shall determine. In the event that such proceedings are instituted at the appellate level, notice of such action shall be provided by the appellate panel assigned to hear the appeal advising the party or attorney ~~of the pendency~~ of the hearing and providing ~~him/her~~ her/him an opportunity to be heard.

Reporter's Notes. This rule ~~has been extensively revised and~~ generally follows ~~generally the most recent amendment to~~ Rule 11 of the Superior Court Rules of Civil Procedure ~~Rule 11~~. It affirms the requirement of good faith in pleading and requires the pleader to assert that there is a good faith basis for the pleading and that it is based in fact and ~~warranted~~ supported by ~~existing~~ law. The amendments to this rule establish procedures consistent with the provisions of R.I.G.L § 28-33-17.3.

2.29. PROCEDURE AND ORDER OF TRIAL. -- All attorneys shall be prepared to proceed on the ~~trial day or as directed by the Trial Judge to have their case heard~~ scheduled date for trial.

2.30. ANNIVERSARY REVIEW. -- (A) ~~An employer and its workers' compensation insurance carrier, if applicable, shall be notified by the Workers' Compensation Court that an employee has been receiving weekly workers' compensation benefits for fifty-two (52) weeks. Said notice shall advise of the right to have the Workers' Compensation Court conduct an anniversary review under § 28-33-46 of the Rhode Island General Laws. Said notice shall also state that the anniversary review will be deemed waived by the employer unless an employer's petition to review is filed with the Workers' Compensation Court within fourteen (14) days of the date of receipt of said notice.~~ If an employee has received weekly workers' compensation benefits for fifty-two (52) consecutive weeks, the employer has the right to request that the Workers' Compensation Court conduct an anniversary review pursuant to the provisions of R.I.G.L. § 28-33-46. The employer must file with the Court an employer's petition to review requesting the anniversary review within fourteen (14) days of the fifty-two (52) week anniversary.

(B) Upon receipt of a request for an anniversary review, the ~~Administrator's~~ Office of the Administrator shall refer the matter to the Medical Advisory Board for an evaluation by ~~an~~ a comprehensive independent health care review team which shall include a vocational rehabilitation counselor. Upon receipt of the report of the comprehensive independent health care review team, the ~~Administrator's~~ Office of the Administrator shall assign the matter to a Judge for pretrial conference pursuant to R.I.G.L. § 28-35-20 at which time the Judge ~~who~~ shall ~~conduct a hearing and~~ make findings as required by R.I.G.L. § 28-33-46.

Reporter's Notes. The rule has been amended to shift the initiation of the anniversary review process to the employer/insurer from the Court.

2.31. APPELLATE REVIEW OF ~~ACTION BY~~ DECISIONS ~~OF~~ BY DEPARTMENT OF LABOR AND TRAINING ~~OR DETERMINATION OF~~ AND THE MEDICAL ADVISORY BOARD. -- (A)(1) Any party may file a petition with the Court to review a decision of the Department of Labor and Training or ~~a determination of~~ the Medical Advisory Board within thirty (30) days of the date the decision ~~or determination~~ enters.

(2) The petitioner shall file with the Court a copy of the decision ~~or determination~~ to be reviewed, along with ~~a concise statement of~~ the petition stating their grounds for appeal. The respondent need not file a responsive pleading unless otherwise required by statute or by Court order.

(B) The ~~original or~~ petitioner shall provide a certified copy of the entire record of the proceeding under review ~~shall be transmitted~~ to the Court within thirty (30) days after the petition is filed, unless the Court orders otherwise.

(C) After a petition is filed, the Court shall establish a schedule for the submission of briefs by the parties ~~regarding their respective positions~~.

(D) The Workers' Compensation Court Rules of ~~Procedure~~ Practice shall govern the proceedings. The Court may consider evidence of procedural irregularities at the Department of Labor and Training or the Medical Advisory Board.

(E) The Court shall not substitute its judgment for that of the Department of Labor and Training or the Medical Advisory Board regarding the weight of the evidence on questions of fact. The Court may affirm or remand the case for further proceedings. The Court may reverse or modify the decision ~~or determination~~ if substantial rights of the petitioner have been prejudiced because the ~~administrative findings, inferences, conclusions,~~ decision~~s,~~ or ~~determinations are~~ of the Department or the Board is:

(1) in violation of the constitutional authority of the ~~agency~~ Department or the Board;
(2) in excess of the statutory authority of the ~~agency~~ Department or the Board;
(3) made upon unlawful procedure;
(4) affected by other error of law;

(5) clearly erroneous in view of the reliable, probative, and substantial evidence ~~on the whole record~~ presented; or

(6) arbitrary or capricious or characterized by abuse of discretion or ~~clearly~~ unwarranted exercise of discretion.

Reporter's Notes. Rule 2.31 implements the procedure to address the expanded jurisdiction of the Court as an appellate body to review the actions taken by ~~other departments and agencies~~ the Department of Labor and Training and the Medical Advisory Board under the provisions of the Workers' Compensation Act. In appeals to the Workers' Compensation Court ~~in cases~~ involving the discipline of health care providers by the Medical Advisory Board and the decisions and orders of the Department, the Court's role ~~appears to be simply~~ is to review the determinations made by the Department or Board to ensure that the parties were afforded all substantive and procedural due process rights. ~~Accordingly, the function of the Court is analogous to the role of the District or Superior Court in reviewing agency appeals pursuant to R.I.G.L. § 42-35-15.~~ Although all proceedings under the provisions of the Workers' Compensation Act are specifically exempted from the Administrative Procedures Act pursuant to R.I.G.L. § 42-35-18(b)(6) – (15), the standard of judicial review of administrative actions established by ~~this section~~ that statute provides helpful guidance in this area and indicates the standards which must be met to ensure proper procedural safeguards. Accordingly, the review of ~~the actions~~ a decision of the Department of Labor and Training and the Medical Advisory Board is limited to the record developed below to ensure that the ~~action taken~~ decision was proper. The Workers' Compensation Court may not~~, however,~~ substitute its judgment for that of the Department or Board as to the weight of the evidence on factual issues which have been determined by the Department or Board.

2.32. APPROVAL OF REHABILITATION PROGRAM. -- (A) Any party may file a petition with the Court to approve a rehabilitation program pursuant to R.I.G.L. § 28-33-41(b). The petition shall set forth all the pertinent facts regarding the program including, but not limited to, the exact date and nature of the employee's injury, the length of the employee's incapacity, the name~~s~~ and address~~es~~ of all ~~medical care~~ health care providers who have treated the employee, and the exact nature of the proposed rehabilitation program including, but not limited to, the location of the program, a proposed start date, a proposed completion date, the goal or objective of the program, the expected cost to complete the program, and the employee's expected earning capacity upon the successful completion of the program.

(B) The petitioner shall attach the following documents to the petition:

(1) A legible copy of the ~~most recent document ordering payment of weekly benefits to the employee along with a copy of the~~ original document(s) establishing liability and ~~describing the nature and location of the work related injuries~~ any subsequent documents modifying the description of the injury, the periods of incapacity, or the employee's average weekly wage.

(2) ~~Four copies~~ A legible copy of all medical records pertaining to the diagnosis and treatment of the employee's work injury, in chronological order and appropriately tabbed.

(3) A legible copy of the most recent Functional Capacity Evaluation.

~~(3)~~ (4) ~~Four copies~~ A legible copy of the rehabilitation provider's report detailing the precise medical restorative services, vocational restorative services or re-employment services recommended for the injured employee, including the program location, the program start date, the expected program completion date, the expected cost, and the expected goal of the program.

~~(4)~~ (5) If the injured employee is the petitioner, an affidavit signed by the employee attesting that ~~he/she~~ s/he is desirous of pursuing the proposed rehabilitation plan and acknowledging that ~~his/her~~ her/his failure to cooperate with a plan approved by the Court may jeopardize ~~his/her~~ her/his receipt of future compensation benefits.

The Office of the Administrator shall not accept for filing any petition seeking approval of a rehabilitation program unless it is accompanied by all of the necessary documents set forth above.

(C) The ~~Administrator's~~ Office of the Administrator shall refer all such petitions to a Judge of the Court who shall conduct a mandatory pretrial conference as is provided for in R.I.G.L. § 28-35-20 ~~of the Rhode Island Workers' Compensation Act~~. At the pretrial conference, the Trial Judge may refer the petition to the Medical Advisory Board with instructions to have the employee evaluated as the Trial Judge may direct. Such evaluation may be performed by an individual to be selected by the Trial Judge or by an independent health care review team whose composition will be determined by the Trial Judge. The Trial Judge may request the petitioner to provide additional copies of the records set forth in subsections (B)(2), (B)(3), and (B)(4) above in the event that the employee is to be evaluated by more than one (1) expert.

Reporter's Notes. Rule 2.32 was ~~completely~~ revised in September 2000 to establish a procedure to support the ~~most recent~~ amendment to R.I.G.L. § 28-33-41(b). The Workers' Compensation Court assumed original jurisdiction over disputes arising under this section of the Act pursuant to P.L. 2000, Ch. 491, § 4. Prior to the passage of this ~~act~~ amendment, disputes relating to the provision of rehabilitative services were initially heard at the Department of Labor and Training and any party dissatisfied with the Department's ruling was given the opportunity to appeal the matter to the Workers' Compensation Court.

~~Since the Court was essentially reviewing the actions of an administrative body, the scope of the review was modeled after the Administrative Procedures Act and essentially focused on whether the record contained competent evidence to support the Director's findings and whether appropriate procedural protection was accorded to the parties.~~

~~The present act grants the Court original jurisdiction to adjudicate these matters.~~ The rule ~~as adopted~~ requires the petitioner to submit the necessary records in support of the proposed rehabilitation plan. The procedure ~~is revised to~~ allow~~s~~ the Court to ~~screen~~ review

requests for approval of rehabilitation programs and protect all parties from abuse of the statute. ~~The revised procedure allows the Court to avoid abuses of the statute.~~

This rule was amended in 2012 to provide for more specific and detailed information to be included in petitions for approval of rehabilitation plans proposed under R.I.G.L. § 28-33-41(b). The rule was also amended with regard to the number of copies of the proposed rehabilitation plan and supporting documentation that need to be initially filed with the Court. The rule provides that only when appropriate, as determined by the Trial Judge, shall additional copies be provided to the Court by the petitioner.

2.33. INSURANCE COVERAGE DISPUTES. -- (A) In any case filed pursuant to the provisions of R.I.G.L. §28-30-13, involving a dispute regarding coverage under the provisions of a workers' compensation insurance ~~agreement~~ contract, the party seeking review of the insurance contract shall file with the ~~Administrator's~~ Office of the Administrator a petition for determination of an insurance controversy which shall contain (1) a ~~short and plain~~ statement of the claim ~~showing that~~ stating the basis for which the petitioner is entitled to relief, and (2) a prayer setting forth the relief sought by the petitioner. Relief in the alternative or in several different types may be demanded. The petition shall set forth the name, address, and agent for service of each respondent.

(B)(1) The petitioner shall effect service upon each respondent in accordance with subsection (B)(3) of this rule by delivering a copy of the petition and summons to a person individually or, if a private corporation, by delivering a copy of the petition and summons to an officer, or a managing or general agent, or by delivering a copy of the petition and summons at an office of the corporation to a person employed by said corporation, or by delivering a copy of the petition and summons to an agent authorized by appointment or by law to receive service of process. If the respondent is a public corporation, body or authority, service shall be made in accordance with subsection (B)(3) of this rule by delivering a copy of the summons and petition to any officer, director, or manager thereof.

(2) The summons shall be under the seal of the Court, identify the Court and the parties, be directed to the respondent, and state the name, Bar number, and address of the petitioner's attorney or, if unrepresented, the name and address of the petitioner. It shall also state that the respondent must file an answer in conformance with subsection (C) of this rule within twenty (20) days of service of the petition and notify the respondent that the failure to do so will result in a judgment by default against the respondent for the relief demanded in the petition.

(3) Service of all process shall be made by a sheriff or the sheriff's deputy~~,~~ within the sheriff's county, by a duly authorized constable, or by a person who is not a party to the proceedings and who is at least eighteen (18) years of age.

(4) The person effecting service shall make proof of such service upon the original process, or a paper attached thereto for that purpose, and shall return it to the petitioner's attorney. The petitioner's attorney shall file such proof of service with the Court.

(C) Within twenty (20) days of the receipt of the petition, the respondent shall file a formal answer to the petition. The answer shall ~~state in plain and concise terms~~ set forth the respondent's defenses to each claim asserted. The answer shall admit or deny each allegation upon which the petitioner relies. In the event that the respondent lacks sufficient knowledge to form a belief regarding the truth of an allegation, the pleading shall so state and such response shall be deemed a denial of the allegation. In the event that the respondent fails to respond to a specific allegation in the petition, such allegation shall be deemed to be admitted.

(D) In the answer, the respondent shall affirmatively set forth any matter constituting an ~~avoidance or~~ affirmative defense. In the event that the respondent fails to plead an ~~avoidance or~~ affirmative defense, such matter shall be deemed to be waived.

(E)(1) When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by this rule and that fact is made to appear by affidavit or otherwise, the Court shall enter the party's default. No judgment shall enter against an infant or incompetent person unless represented in the action by a guardian, guardian ad litem, or such other representative who has appeared therein.

(2) No judgment by default shall be entered until the filing of an affidavit made by some competent person on the affiant's own knowledge, setting forth facts showing that the respondent is not a person in military service as defined in Article I of the Soldiers and Sailors Civil Relief Act of 1940, as amended, except upon order of the Court in accordance with that Act.

(F) Upon the filing of the petition, the Chief Judge of the Workers' Compensation Court shall assign the matter to a Judge and the Court shall forthwith notify the parties of the Judge to whom the matter has been assigned. All subsequent proceedings shall be conducted before the ~~Judge~~ Trial Judge to whom the matter has been assigned except as otherwise provided in these rules.

(G) Following the filing of the petition and the answer, the ~~Judge~~ Trial Judge to whom the matter has been assigned shall direct the parties to appear before her/him for a conference to consider:
(1) the ~~simplification~~ determination of the issues;
(2) ~~The necessity or desirability of~~ any amendments to the pleadings;
(3) ~~The necessity or desirability of adding or joining~~ the need to add or join additional parties to the action;
(4) ~~The possibility of obtaining~~ any admissions of fact and ~~of~~ documents which will ~~avoid unnecessary proof~~ be entered by stipulation of the parties;
(5) ~~The limitation of the number~~ the names of any expert witnesses; and
(6) such other matters which may aid in the efficient disposition of the action.

At the close of the conference, the ~~Judge~~ Trial Judge shall ~~enter a conference order which~~ ~~shall~~ establish dates for the closing of discovery, the submission of all pretrial memoranda designated by the Trial Judge, and the date(s) for the trial. Except for good cause shown, the parties shall conclude all pretrial discovery within forty-five (45) days of the date on which the ~~scheduling~~ conference is conducted and the matter shall be assigned to trial within twenty-one (21) days of the date on which discovery is concluded.

(H) Following the trial on the merits, the ~~court~~ Trial Judge shall render a decision which responds to the petitioner's prayer for relief and ~~the court shall~~ prepare an appropriate decree pursuant to Rule 2.20 of these rules.

Reporter's Notes. In 2000, the General Assembly expanded the jurisdiction of the Court to provide for the adjudication of disputes between an employer and an insurance carrier regarding a policy of workers' compensation insurance. This was a revolutionary change for several reasons. For the first time, the Court exercised jurisdiction in cases not arising from a dispute between an employer and an employee regarding the employee's right to a workers' compensation benefit. Prior to this time, the statutory and decisional law was clear that disputes between an employer and an insurer relating to insurance coverage were not within the Court's basic jurisdiction. While the adjudication of cases of this nature may well seem to be a logical evolution of the Court's authority, it was nevertheless a major expansion of the Court's authority.

The second ~~significant~~ aspect of this statutory change which was noteworthy involved the pretrial conference. Cases of this nature are not heard at pretrial conference pursuant to R.I.G.L. § 28-35-20 as are most other cases filed with the court. Since these cases do not involve a claim for a weekly compensation benefit and are not intended to address an issue regarding wage replacement, it was felt that the need to enter a binding pretrial order was not significant and the more traditional approach was adopted. In fact, the procedure adopted by the Court more closely tracked the Superior Court Rules of Civil Procedure rather than the rules relating to petitions for compensation benefits.

This rule was extensively revised in 2004 to ensure that respondents are provided with ample notice and the opportunity to appear and defend. Rule 2.33 (B) requires the petitioner to effect service upon the respondent utilizing the basic processes set out in Rule 4 of the Superior Court Rules of Civil Procedure to provide in-hand service in most situations. This is a significant departure from the standard practice of the Workers' Compensation Court pursuant to R.I.G.L. § 28-35-14 which generally charges the Court with the responsibility to serve petitions upon the respondents. However, since disputes regarding insurance coverage require responsive pleading and the rules establish a default procedure if such answer is not filed (Rule 2.33(E)), the Court determined that actual service was the most efficient way to join the issues. The respondent in ~~cases of this nature~~ this type of case is required to file an answer with the Court addressing the allegations of the petition and raising any available affirmative defenses. If affirmative defenses are not raised in the answer they are deemed waived.

Upon the filing of the answer, the petition is assigned to a Trial Judge who will thereafter establish a schedule for the completion of discovery and for the filing of pretrial briefs and motions. It is anticipated that the procedure adopted by the Court will essentially track the procedure followed in the Rhode Island Superior Court in cases seeking declaratory relief pursuant to the Uniform Declaratory Judgments Act (R.I.G.L. § 9-30-1 to § 9-30-16).

2.34. PROCEDURE REGARDING STOP WORK ORDERS PURSUANT TO R.I.G.L. § 28-36-15~~(e)~~ (i). -- (A)(1) In the event that the Director of the Department of Labor and Training issues an order suspending the operation of ~~a business~~ an employer for failure to secure workers' compensation insurance, the employer may appeal the entry of the order to the Workers' Compensation Court ~~on forms prescribed by the Court~~.

(2) The Court shall schedule a hearing within five (5) days of the filing of the appeal to determine ~~whether the suspension order was proper or~~ whether the order of suspension may be ~~lifted~~ stayed. In order to obtain a court order ~~lifting~~ staying the Director's order of suspension, it shall be the burden of the employer/appellant to present specific facts to demonstrate that the substantial rights of the employer have been prejudiced because the Director's order is (a) in violation of the Department's constitutional or statutory authority, (b) made upon unlawful procedure, (c) arbitrary, capricious or characterized by clear abuse of discretion, or (d) clearly erroneous, and ~~it clearly appears from specific facts~~ that immediate and irreparable loss, damage, or injury will result to the employer if the order of suspension remains in effect during the pendency of the ~~suspension~~ appeal.

(3) The proceeding to stay the order of suspension pending a hearing on the merits shall be on the record. All agreements or stipulations entered during the course of the proceeding shall be binding.

(4) Following the hearing, the Court shall issue an order determining whether the Director's order of suspension may be stayed during the pendency of the appeal on the merits or whether the order shall remain in full force and effect. ~~In its order~~ The Court shall set a date for a full hearing on the merits ~~no later than~~ within twenty-one (21) days ~~hence~~.

(B)(1) In the event that the Director of the Department of Labor and Training issues an order suspending the operation of ~~the business~~ an employer for failure to secure workers' compensation insurance and ~~it appears that~~ the employer has failed to comply with said order, the Director may file a petition with the Court for an emergency hearing to enforce the terms of ~~its~~ her/his order. The petition shall ~~set forth specific~~ state the facts ~~setting forth~~ establishing the basis for ~~said~~ the order of suspension, the dates on which the order ~~of suspension~~ was entered by the Department and served upon the employer, and ~~specific facts demonstrating~~ that the employer has continued to operate its business following the entry of said order.

(2) The Court shall schedule a hearing on ~~said~~ the petition to enforce within forty-eight (48) hours of the date of filing. The Director shall effect ~~personal~~ service of the petition on the employer as set forth in Rule 2.33(B) of the ~~Workers' Compensation Court's~~ Rules of Practice of the Workers' Compensation Court and shall ~~make affidavit~~ certify to the Court that such service has been effected prior to the time of the hearing.

(3) The Court shall conduct a pretrial conference in connection with the Director's petition to enforce in accordance with R.I.G.L. §28-35-20 and Rule 2.3 of the ~~Workers' Compensation Court's~~ Rules of Practice of the Workers' Compensation Court. Following the pretrial conference, the Court shall ~~issue~~ enter a pretrial order granting or denying the petition to enforce ~~which responds to the Director's prayer for relief~~. ~~Said~~ The pretrial order shall be

binding on the parties as of the date of entry and ~~an appeal of the order~~ the filing of a claim for trial shall not stay its operation. If either party is aggrieved by the Court's pretrial order, they may file a claim for trial which shall proceed in accordance with the Workers' Compensation Act and the ~~Court's~~ Rules of Practice of the Workers' Compensation Court.

Reporter's Notes. This rule ~~is new and~~ was enacted to establish the procedure in those cases where the Director of the Department of Labor and Training issues an order requiring an employer to cease operations for failure to maintain workers' compensation insurance pursuant to R.I.G.L. § 28-36-15~~(e)~~ (i). ~~The new~~ This rule recognizes that such an order could have a devastating impact upon the operation of a business and therefore allows the employer to file an immediate appeal to the Workers' Compensation Court seeking a stay of the Director's order. The employer has the ~~duty~~ burden to present ~~specific~~ facts setting forth the procedural or substantive errors made by the Director and, more importantly, requires the employer to ~~present specific facts to~~ demonstrate that irreparable harm will result if the order is not ~~stated~~ stayed pending appeal. ~~Such petitions~~ The request for a stay of the Director's order will be heard by the Court within five (5) days of the date of filing the appeal.

Rule 2.34 (B) addresses the situation where the Director has issued an order suspending business operations for the failure to secure workers' compensation insurance and the employer continues to conduct operations in defiance of that order. R.I.G.L. § 28-36-15~~(e)~~(i) specifically notes that "the operation of a commercial enterprise without the required workers' compensation insurance is a crime and creates a clear and present danger of irreparable harm to employees who are injured while the employer is uninsured." In light of this, the Court determined that immediate action was required ~~where~~ when the employer is operating in defiance of ~~a~~ the Director's order. Rule 2.34 (B)(2) ~~allows for a hearing~~ provides that a pretrial conference will be held within forty-eight (48) hours of the date a petition ~~seeking relief~~ to enforce is filed by the Director and imposes upon the Director of the Department of Labor and Training the duty to make actual service upon the employer consistent with the requirements of Rule 2.33 (B). ~~The Court will hear the matter in the setting of a pretrial conference.~~ The rule provides that if the Court is satisfied that the employer is required to maintain workers' compensation insurance and has failed to do so, a pretrial order ~~may~~ shall enter suspending the employer's business operations. If the employer continues to conduct business following the pretrial order, it would be subject to contempt proceedings ~~to adJudge the business in contempt of court~~.

2.35. APPEALS FROM DETERMINATIONS OF THE RETIREMENT BOARD PURSUANT TO R.I.G.L. § 45-21.2-9. -- (A) Any appeal from a determination of the Retirement Board made pursuant to R.I.G.L. § 45-19-1 shall be heard by the Court, *de novo*, in accordance with the Rules of Practice of the Workers' Compensation Court and R.I.G.L. § 45-21.2-9.

(B) The party claiming an appeal shall file a notice of appeal with the Court on a form provided by the Court, shall deliver a copy to the Retirement Board, and shall serve copies of

said notice of appeal upon the opposing parties. The notice of appeal shall be accompanied by a statement of claim on a form provided by the Court together with copies of the medical reports which the member intends to rely upon in support of the claim for benefits and the Orders and Findings adopted by the Retirement Board. The Office of Administrator shall not accept any notice of appeal for filing unless accompanied by all necessary documents.

(C) When a notice of appeal is timely filed with the Court, the order of the Retirement Board shall be stayed pending further action by the Court.

(D) Upon receipt of the notice of appeal and statement of claim, a Judge shall conduct a mandatory pretrial conference within twenty-one (21) days, pursuant to R.I.G.L. § 28-35-20. Notice of said conference shall be sent by the Administrator to the parties and/or attorneys of record stating the name of the Judge assigned to hear the matter as well as the date, time, and location of the pretrial conference.

(E) No later than seventy-two (72) hours prior to the pretrial conference all parties shall submit and exchange the medical records and reports in support of their respective positions regarding the claim.

(F) Upon receipt of a notice of appeal and prior to the pretrial conference, the municipality/agency affected by the decision of the Retirement Board may intervene as a party to the case without leave of the Court. Following the pretrial conference, and only with leave of the Court, the municipality/agency may intervene as a party and shall then be entitled to notice and an opportunity to be heard

(G)Any party aggrieved by a decision or decree of the Workers' Compensation Court shall file an appeal in accordance with G.L. § 28-35-28 and Article IV of the Rules of Practice of the Workers' Compensation Court.

(H) The Court shall retain jurisdiction in these matters to review its orders and decrees. Such petitions shall be filed directly with the Court and shall be subject the Rules of Practice of the Workers' Compensation Court and procedures for case management and dispute resolution as set forth in R.I.G.L. § 28-29-1 through § 28-38-25.

Reporter's Notes. In 2011, the jurisdiction of the Workers' Compensation Court was expanded by the enactment of R.I.G.L. § 45-21.2-9(f) – (k). This rule was added to set forth the rules and procedure for appeals from the Retirement Board by parties seeking accidental disability benefits pursuant to R.I.G.L. § 45-19-1. It must be noted that the Rule was designed to reconcile the unique nature of the litigation under G.L. § 45-21.2-9 with other litigation before the Workers' Compensation Court. Initially, it must be noted that the amendment to the statute did not set forth a time within which a party may pursue an appeal to the Workers' Compensation Court. In such circumstances, our Supreme Court has consistently held that where no time limit is identified in a statute, the time shall be a reasonable one. *See* First Bank and Trust Co. v. City of Providence, 827 A.2d 606, 611

(2003). In determining what is a reasonable time within which to file a notice of appeal, the Court will look to other time limitations contained in the Act. In that regard, reference is made to the period within which to seek review of a final decree of the Workers' Compensation Court set forth in G.L. § 28-35-29 (twenty days (20)). The parties should also be aware that the terms "pretrial conference" and "pretrial order" as used in the Workers' Compensation Act are vastly different than the common usage. G.L. § 28-35-20 sets forth the procedure for the pretrial conference under the terms of the Act and the requirement that the Court enter a pretrial order following the pretrial conference. It mandates that the pretrial order address the relief sought in the petition and shall be binding upon the parties upon entry. Any payments ordered shall be made within fourteen (14) days of the date on which the order was entered. Moreover, the pretrial order remains in full force and effect until a final decree is entered by the Court. Thus, the pretrial conference is a significant milestone in any workers' compensation case and the parties should be ready to proceed on the date set for hearing. This portion of the statute was reviewed by the Rhode Island Supreme Court in City of Pawtucket v. Pimental, 960 A.2d 981 (R.I. 2008).

III. RECORDS

3.1. HOURS. -- The Office of the Administrator ~~Administrator's office~~ shall be open from ~~8:00~~ 8:30 A.M. to 4:30 P.M., Monday through Friday, or such other time as the Court may set. Trials shall be conducted from ~~9:30~~ 10:00 A.M. to 12:30 P.M., and from 2:00 P.M. to 4:30 P.M. Monday through Friday, or such other times as the Court may set.

3.2. PROOF OF FILING. -- The only proof of the time of filing any paper shall be the filemark of the Office of the Administrator. No paper shall be treated as filed unless said paper is received in the Office of the Administrator ~~Administrator's office~~ before the end of the day upon which said paper is required to be filed.

3.3. BRIEFS AND MEMORANDA. -- Every brief ~~or~~ and memorandum ~~of authorities~~ filed with the Court shall be printed or typewritten, on good paper, 8 ½ by 11 inches ~~inch~~, distinctly legible, and shall be signed by the attorney or party presenting it. Said brief or memorandum shall contain (1) a brief and concise statement of the case, (2) the specific questions raised, and (3) legal argument, together with the authorities relied ~~on~~ upon in support thereof. In cases where it may be necessary for the Court to conduct an examination of record evidence, each party shall specify in their brief the leading facts which they deem established by the evidence, with a reference to the transcript or deposition pages where the evidence of such fact may be found.

Briefs ~~or~~ and memoranda ~~of authorities~~ shall be bound at the top left corner, and not on the side, and shall contain a signed certification that a copy has been forwarded to all counsel of record.

3.4. WITHDRAWAL OF EVIDENCE. -- After the final disposition of a case, attorneys may, with the approval of the Court, withdraw all exhibits introduced into evidence and not required by statute, rule, or special order to remain on file. If the same are not withdrawn within ninety (90) days the Office of the Administrator shall not be required to preserve the same. If the Court shall so direct, the parties shall substitute exact copies of any exhibit so withdrawn.

3.5. AMENDMENT OF RECORDS. -- The Court may allow amendments, which do not affect legibility, to be made on the face of the original document, provided that any amendment so made shall be dated and signed or initialed by counsel and/or the Trial Judge.

3.6. ~~PARTIES -- DESIGNATION OF RECORDS~~ INFORMATION REQUIRED ON PETITIONS AND OTHER DOCUMENTS. -- Every petition filed with the Court shall have endorsed thereon the name and address of the ~~party~~ petitioner, ~~and if filed by the employee, his or her Social Security Number, and~~ the name, address, Bar number, and telephone number of the attorney, if any, representing ~~the~~ same, and the name and mailing address of the respondent. Every document subsequently filed in any case shall ~~also have endorsed thereon the name and number~~ state the assigned name and number of the case and a brief ~~designation of the character of the paper~~ description of the purpose of the document.

3.7. PRESENTATION OF DOCUMENTS FOR ENTRY AND SIGNATURE. -- All motions, orders, decrees, requests for extension of time for filing reasons of appeal, or any other document presented for entry or for the signature of any Judge shall be accompanied by the file pertaining to said matter.

All motions, orders, decrees, requests for extension of time for filing reasons of appeal, or any other documents shall be executed by the Judge to whom the matter has been assigned or who rendered the decision in said matter, unless said Judge is not in attendance at the Court due to illness or vacation, in which case the document shall be presented to the ~~duty~~ Duty Judge for signature.

IV. APPEALS

4.1. FILING OF CLAIM OF APPEAL. -- (A) Any person aggrieved by the entry of a decree by a Trial Judge may appeal to the Appellate Division of the Court by filing with the Office of the Administrator a claim of appeal on a form promulgated by the Court. The claim of appeal shall include a request for a transcript of the testimony and decision in the case, or any part thereof required for purposes of the appeal.

(B) The party filing the claim of appeal shall forthwith forward a conformed copy of said claim of appeal to all other parties which shall include all dates, amounts, and times contained in the original claim of appeal filed with the Court.

~~4.1~~ 4.2 TRANSCRIPT ON APPEAL. -- ~~Every party requesting a stenographer to transcribe testimony taken in a hearing by him or her shall, forthwith,~~ At the time of the filing of the claim of appeal and request for the transcript of the proceedings, the party shall deposit with the Office of the Administrator ~~of the Court~~ such sum as the stenographer shall estimate to be the cost of the transcription, computed at the rate of three dollars and 00/100 ($3.00) per page for originals and one dollar and 50/100 ($1.50) per page for copies thereof. ~~Where~~ When two (2) or more parties each claim an appeal in the same cause or proceeding, and each party orders a complete transcript, only one (1) transcript shall be required, and if the total amount deposited by all the parties exceeds the cost of the transcript, the excess shall be divided equally among the depositors and each depositor shall be repaid their proportionate share. This rule shall apply to all parties except the State of Rhode Island, which shall have thirty (30) days in which to make said deposit.

~~4.2. APPEAL TO THE APPELLATE DIVISION. -- When a party appeals to the Appellate Division, he/she/it shall upon filing said claim of appeal forthwith forward a conformed copy of said appeal to all other parties which shall include all dates, amounts, and times contained in the original claim of appeal. Any requests thereafter granted to extend the time for filing the reasons of appeal and the transcript shall likewise be sent to all other parties forthwith.~~

4.3. ~~CLAIM OF APPEAL TO THE APPELLATE DIVISION.~~ FAILURE TO PERFECT APPEAL. -- ~~Where~~ When a party who has ~~been aggrieved by a decree of a Trial Judge and has~~ filed a claim of appeal to the Appellate Division, fails to perfect the appeal by filing the reasons of appeal within the time prescribed, or for any other cause, the ~~Workers' Compensation~~ Court shall issue an order to show cause why the appeal should not be dismissed, mailed to both the appellant and the appellee, setting the same down for hearing to a day certain before the Trial Judge who rendered the decision. ~~This rule shall apply to all pending matters wherein the appellant has failed to perfect the appeal.~~

4.4. EXTENSION OF TIME. -- (A) When no transcript is requested, the reasons of appeal shall be filed within twenty (20) days of the date on which the claim of appeal is ~~taken~~ filed.

(B) When a transcript is requested, the stenographer shall notify the parties that the transcript has been completed and that the reasons of appeal must be filed within twenty (20) days of the date of said notice.

(C) The Court shall grant only one ex parte extension of time to file the reasons of appeal and said extension shall not be granted for more than thirty (30) days.

(D) Additional extensions of time to file the reasons of appeal may ~~shall~~ be granted by motion with notice to all parties or by written agreement signed by all parties and approved by the Court.

4.5. PRACTICE ON APPEAL. -- (A) Within ten (10) days of the filing of the reasons of appeal with the Office of the Administrator ~~of the Court~~, the appellant or other moving party shall file a statement of the case and a summary of the issues proposed to be argued on appeal. This document shall be concise, not exceeding five (5) pages, and a copy ~~of the same~~ shall be mailed to the appellee(s). Within ten (10) days after the filing of the above statement, the responding party may file a counter-statement, not to exceed five (5) pages, and a copy shall be promptly mailed to the appellant. Failure to file a counter-statement shall ~~be deemed~~ constitute a waiver of the same.

(B)(1) Following the filing of such statements, the ~~court~~ Court may require the appearance by counsel for the parties before a single ~~justice~~ Judge of the ~~court~~ Court for a settlement conference. Counsel shall be prepared to engage in a meaningful discussion of the matter with the goal of achieving settlement of the dispute. If a settlement is not reached, the objectives of the conference shall be to determine the issues on appeal and to determine the manner in which the appeal shall proceed.

(2) At the time scheduled for the settlement conference, counsel for all parties shall submit a joint filing which shall certify that they have conferred in good faith to attempt to resolve the disputed issues prior to the time of the conference.

(C) In the event that the single ~~justice~~ Judge of the ~~court~~ Court determines it appropriate, ~~he or she~~ s/he may:
(1) refer the appeal to an appellate panel for disposition of the issues on appeal by order or opinion without further argument; or
(2) order that the matter be placed on the regular appellate calendar for oral argument before an appellate panel.

In either situation, the single ~~justice~~ Judge may direct or allow the filing of supplemental memorandum by the parties and set the time for the filing of same.

Reporter's Notes. ~~The recent amendment to this~~ This rule codifies the settlement conference procedure ~~which has been operating as a pilot program for several years~~. This procedure was reviewed and endorsed by the Supreme Court's Committee on Alternate Dispute Resolution as an effective vehicle to reduce the issues in dispute and to foster meaningful dialogue calculated to resolve the matter. ~~The appellant must file a statement of the case within ten days of the date on which reasons of appeal are filed. Thereafter, the appellee is given the opportunity to respond. The matter will then proceed to settlement conference.~~

This rule also changes the procedure for show cause hearings. Following the settlement conference, the matter may be assigned to an appellate panel for disposition ~~"without~~

~~further argument" or, if appropriate, assigned for further~~ ~~argument before the Appellate Division~~ with or without argument. This ~~new~~ provision is modeled after Rhode Island Supreme Court Rules, Art. I, Rule 12A (3)(b), and ~~simply~~ allows the Appellate Division to expedite the handling of those cases ~~where the appeal has not been perfected or~~ where the issue on ~~an~~ appeal is relatively simple and unequivocally controlled by settled law. In all other cases, it is anticipated that the matter will be heard at oral argument.

4.6. DECREES OF APPELLATE DIVISION. -- No final decree shall be entered by the Appellate Division without forty-eight (48) hours notice to all parties, regardless of whether it is a new decree or ~~merely~~ affirms the decree of the Trial Judge.

4.7. REVIEW BY ~~CERTIORARI~~ SUPREME COURT -- PROCEDURE. -- A copy of ~~all~~ any petition~~s~~ or motion to the Supreme Court of the State of Rhode Island ~~for a writ of certiorari involving a final decree of the Appellate Division of the Workers' Compensation Court~~ regarding any order or decree of the Workers' Compensation Court shall be filed with the Office of the Administrator of the Workers' Compensation Court by the petitioner/movant and contemporaneously with the Clerk of the Supreme Court.

A copy of the order of the Supreme Court granting or denying ~~said~~ any writ of certiorari or motion shall forthwith be filed with the Office of the Administrator of the Workers' Compensation Court by the attorney for the prevailing party.

Reporter's Notes. This rule requires that any petition or motion filed with the Rhode Island Supreme Court regarding any order or decree of the Workers' Compensation Court must be contemporaneously filed with the Office of the Administrator so that the Workers' Compensation Court is notified of any proceedings or actions taken by the Supreme Court.

V. PRO HAC VICE

5.1. OUT OF STATE COUNSEL. -- No person, who is not an attorney and counselor of the Supreme Court of the State of Rhode Island, shall be permitted to act as attorney or counselor for any party in any proceeding, hearing or trial in the Workers' Compensation Court unless granted leave to do so by the Workers' Compensation Court or by the Supreme Court. Unless the Workers' Compensation Court or the Supreme Court permits otherwise, any attorney who is granted such leave to practice before the Workers' Compensation Court shall not engage in any proceeding, hearing, or trial therein unless there is present in the courtroom for the duration of the proceeding, hearing, or trial a member of the bar of Rhode Island who shall be prepared to continue with the proceeding, hearing or trial in the absence of counsel who has been so granted leave.

Subject to the limitations and exceptions set forth in Article II, Rule 9 of the Supreme Court Rules for the Admission of Attorneys and Others to Practice Law, leave shall be granted by the Workers' Compensation Court, in its discretion, upon a miscellaneous petition signed by the petitioner in a form approved by the Court [Exhibit A], supported by certifications of the attorney seeking admission pro hac vice and of Rhode Island associate counsel [Exhibit B], and assented to by the party being represented in a client certification [Exhibit C].

Exhibit A

STATE OF RHODE ISLAND PROVIDENCE, SC		**WORKERS' COMPENSATION COURT**
	:	
	:	
v.	**:**	**W.C.C.**
	:	
	:	

MISCELLANEOUS PETITION FOR ADMISSION PRO HAC VICE
SUPREME COURT ARTICLE II, RULE 9(A)

_____ hereby requests that _____
Petitioner

be admitted pro hac vice in the above-case/agency proceeding as counsel with local associate counsel identified below, on the following grounds (*Please check appropriate grounds and provide specifics as noted*):

☐ The case/agency proceeding involves the following complex areas of the law, in which pro hac vice counsel concentrates: (*Petitioner shall specify the area of law at issue and the basis upon which s/he certifies that the pro hac vice counsel concentrates in said area, including past cases in this or any other jurisdiction. Detailed information about past cases, including docket sheets, must be provided. Attach additional pages if needed.)*

☐ Pro hac vice counsel's long-standing representation of the client: (*Petitioner shall specify all facts to support the long-standing attorney-client relationship at issue, including dates and extent of the representation. Detailed information about past cases, including docket sheets, must be provided. Attach additional pages if needed*

☐ The local bar lacks experience in the field involved: (*Petitioner shall specify all facts to support the claim that the local bar lacks the expertise necessary to competently handle this case. Attach additional pages if needed.)*

☐ The case/agency proceeding involves complex legal questions under the law of a foreign jurisdiction with which pro hac vice counsel is familiar: (*Petitioner shall specify all facts to support the claim that the case/agency proceeding involves the existence of legal questions involving the law of a foreign jurisdiction with which pro hac vice counsel is familiar and the basis for that familiarity. Detailed information about past cases, including docket sheets, must be provided. Attach additional pages if needed.)*

☐ The case/agency proceeding requires extensive discovery in a foreign jurisdiction convenient to pro hac vice counsel: (*Petitioner shall specify all facts to support the need for extensive discovery proceedings in a foreign jurisdiction with which pro hac vice counsel is familiar. Detailed information about past cases, including docket sheets, must be provided. Attach additional pages if needed.)*

□ It is a criminal case, and pro hac vice counsel is defendant's counsel of choice.

□ Other: (*Petitioner shall specify all other facts to support a finding of good cause. Attach additional pages if needed*

I hereby represent that I am a member in good standing of the bar of the State of Rhode Island and that I am actively engaged in the practice of law out of an office located in this state.

_____

Signature

_____

Print Name and R.I. Bar No.

Attorney for: _____

Dated: _____

_____

Signature Pro Hac Vice Counsel/Applicant

CERTIFICATE OF SERVICE

I, _____, hereby certify that a true copy of the within petition for admission pro hac vice with accompanying attorney and client certifications were sent postage prepaid to_____, on this _____ day of _____ 20___.

_____

Exhibit B

STATE OF RHODE ISLAND **WORKERS' COMPENSATION COURT**
PROVIDENCE, SC

:
:
v. **:** **W.C.C.**
:
:

ATTORNEY CERTIFICATION FOR ADMISSION PRO HAC VICE
SUPREME COURT ARTICLE II, RULE 9(A)

☐ I certify that I am a member in good standing of the bar of the following State(s) without any restriction on my eligibility to practice, and that I understand my obligation to notify this Court immediately of any change to my status in this respect. (*Attach additional pages if needed.)*

Jurisdiction	Dates of Admission	Bar No.	Current Status

☐ I certify that I am not currently disbarred or suspended in any court.

☐ Below is a complete list of all matters in which I have sanctioned or disciplined. (*Attach additional pages if needed.)*

Jurisdiction/Authority	Caption/Case No.	Nature of Allegations	Action Taken

☐ The following is a complete and accurate list of *all* proceedings in which I have applied for pro hac vice admission pursuant to Article II, Rule 9(a) of the Supreme Court Rules on the Admission to Practice Law. (*Attach additional pages if needed. Attach docket sheets for all cases listed below and copies of all court orders pertaining to your admission pro hac vice.)*

Court Filed	Case Name/No.	Date Filed	Admission Granted?

☐ I have read and certify that the Miscellaneous Petition for Admission Pro Hac Vice filed by local counsel with this certification contains true and accurate information regarding my experience which provides the basis for my admission pro hac vice.

☐ I have read, acknowledge, and agree to observe and to be bound by the local rules and orders of this Court, including the Rules of Professional Conduct of the Rhode Island Supreme Court, as the standard of conduct for all attorneys appearing before it.

☐ I acknowledge that if specially admitted to appear in the above-entitled matter that I will be subject to the disciplinary procedures of the Rhode Island Supreme Court. I hereby authorize the disciplinary authorities of the bar of the State(s) listed above to release any information concerning my practice in said State(s) pursuant to the request of the Disciplinary Counsel of the Rhode Island Supreme Court.

☐ For purposes of this case I have associated with local associate counsel identified below, and have read, acknowledge, and will observe the requirements of this Court respecting the

participation of local associate counsel, recognizing that failure to do so may result in my being disqualified, either upon the Court's motion or motion of other parties in the case.

_____

Signature

_____

Print Name

_____

Firm Name

_____

Business Address

CERTIFICATION OF LOCAL ASSOCIATE COUNSEL

I certify that I have read and join in the foregoing Certification, and acknowledge and agree to observe the requirements of this Court as related to the participation and responsibilities of local associate counsel.

_____

Signature

_____

Print Name

_____

R.I. Bar No.

_____

Firm Name

_____

Business Address

Exhibit C

STATE OF RHODE ISLAND **WORKERS' COMPENSATION COURT**
PROVIDENCE , SC

	:	
	:	
v.	:	**W.C.C.**
	:	
	:	

CLIENT CERTIFICATION

I, _____, certify that:

1. I am the plaintiff/defendant or an authorized representative of a corporate or business entity which is the plaintiff/defendant in this case;

2. I am aware that Attorney _____, is not a member of the Rhode Island bar, but that he/she has applied for permission to appear in this case on my behalf;

3. I am also aware that, if Attorney _____ is permitted to appear in this case, I will also be required to engage as co-counsel and pay for the services of a lawyer who is a member of the Rhode Island bar;

4. I am also aware that the Rhode Island lawyer engaged must be fully prepared to assume complete responsibility for the case at any time, and may be required to conduct the trial/ hearing/appeal in this case on my behalf (or on behalf of the corporate or business entity);

5. Having been advised of the matters set forth above, I support the request of Attorney _____ to be permitted to appear in this case on my behalf (or on behalf of the corporate or business entity), in accordance with the rules of this Court and of the Supreme Court of the State of Rhode Island.

_____ _____
Witness Signature

_____
Print Name

_____
Date

VI. RULES OF PROCEDURE OF THE MEDICAL ADVISORY BOARD

6.1 COMPOSITION. -- The Chief Judge of the Workers' Compensation Court shall appoint a Medical Advisory Board which shall serve at the Chief Judge's pleasure and consist of eleven (11) members in the following specialties: one (1) orthopedic surgeon, one (1) neurologist, one (1) neurosurgeon, one (1) physiatrist, one (1) chiropractor, one (1) physical therapist, one (1) internist, one (1) psychiatrist and three (3) ad hoc physician members appointed at the discretion of the Chief Judge. The Chief Judge shall designate the Chairperson of the Board.

6.2 AUTHORITY. -- The Chief Judge of the Workers' Compensation Court, with the advice of the Medical Advisory Board, is authorized to:

(1) adopt and review protocols and standards of treatment for compensable injury, which shall address types, frequency, modality, duration, and termination of treatment, and types and frequency of diagnostic procedures;

(2) approve and promulgate rules, regulations, and procedures concerning the appointment and qualifications of comprehensive independent health care review teams;

(3) approve and administer procedures to disqualify or disapprove medical service providers and maintain the approved provider list;

(4) appoint an Administrator of the Medical Advisory Board;

(5) approve and promulgate rules, regulations, and procedures concerning the appointment and qualifications of impartial medical examiners;

(6) bi-annually review the performance of each comprehensive independent health care review team and impartial medical examiner.

6.3 MEETINGS. -- The Medical Advisory Board shall meet periodically at the call of the Chairperson. The meeting of six (6) members will constitute a quorum. The approved written minutes, excepting any audio and/or visual recording used to aid in the compilation of the meeting minutes, will constitute the record of proceedings unless otherwise noted in these Rules.

6.4 IMMUNITY. -- Any person serving as a member of the Medical Advisory Board shall be immune from any civil liability in that capacity so long as that person acts in good faith, without malice and not for improper personal enrichment.

6.5 PROTOCOLS AND STANDARDS OF TREATMENT. -- Protocols and standards of treatment for compensable injury shall be adopted pursuant to Rule 6.2(1) and may be updated or modified from time to time. They shall be maintained in the Office of the Administrator of the Medical Advisory Board.

6.6 IMPARTIAL MEDICAL EXAMINERS AND INDEPENDENT HEALTH CARE REVIEW TEAMS. -- The following rules apply to the selection of physicians for impartial medical examiner positions and for physicians/health care providers who wish to participate on comprehensive health care review teams. The Medical Advisory Board may limit the number of impartial medical examiners in each specialty.

(A) *Qualifications*. –

(1) The applicant/physician shall be Board Certified, if applicable, in a medical specialty certified by one of the following organizations: the American Board of Medical Specialties, the American Osteopathic Association Bureau of Osteopathic Specialists, or the American Board of Physician Specialties. Board-qualified physicians can obtain a provisional appointment for a period of five (5) years after completion of her/his medical training.

(2) The applicant/physician/health care provider who seeks appointment as an impartial medical examiner must be willing and able to see employees subject to petitions before the Workers' Compensation Court within three (3) weeks of their appointment by the Court and to render a written report, as described in subsection (C)(3) herein, to the Office of the Administrator of the Medical Advisory Board within a period of three (3) weeks.

(B) *Application*. –

(1) The applicant/physician/health care provider must complete a form, a copy of which is appended to these Rules as Exhibit 1, detailing a record of prior achievements, hospital staff appointments (where applicable), and an explanation of any past disciplinary action (where applicable). A current curriculum vitae (CV) must be attached.

(2) Applications should be mailed to the Medical Advisory Board, Attn.: Office of the Administrator, Workers' Compensation Court, One Dorrance Plaza, Providence, RI 02903.

(3) Each health care provider approved by the Medical Advisory Board as an impartial medical examiner shall apply for renewal every two (2) years on a form supplied by the Medical Advisory Board. A current CV shall be submitted with the renewal application.

(C) *Requirements*. –

(1) Upon approval, each impartial medical examiner will be sworn in by the Chief Judge of the Workers' Compensation Court or the Chief Judge's designee.

(2) Billing for impartial medical examinations scheduled by the Court or the Medical Advisory Board shall be in accordance with the fee schedule established by the Chief Judge, with the advice of the Medical Advisory Board.

(3) Reports shall be issued in the format set forth on Form MAB05, a copy of which is appended to these Rules as Exhibit 2.

6.7 DISQUALIFICATION OF HEALTH CARE PROVIDERS. -- The following rules are promulgated for the purpose of assisting the Administrator of the Medical Advisory Board, the health care providers, and the Medical Advisory Board in the consideration and resolution of complaints against health care providers formally brought to the attention of the Medical Advisory Board.

(A) *Procedure*. -- Formal proceedings before the Medical Advisory Board are neither civil nor criminal in nature, but are quasi-judicial administrative proceedings. The proceedings shall conform generally to these Rules and to such other Rules of Procedure as may be adopted by the Medical Advisory Board, as authorized by R.I. G. L. §§ 28-30-22(b)(3) and (e).

(B) The Medical Advisory Board may receive a complaint regarding allegations of misconduct by a health care provider through the submission of a properly filed complaint as described in Rule 6.7(C) of the Workers' Compensation Court Rules of Practice.

(C) *Complaint*. --

(1) Time of Filing. -- A complaint shall be filed within one (1) year from the date of the occurrence of the alleged violation or misconduct. The date of receipt by the Administrator and not the date of deposit in the mail, shall be determinative.

(2) Place of Filing. -- A complaint shall be filed at the Medical Advisory Board, Attn.: Office of the Administrator, Workers' Compensation Court, One Dorrance Plaza, Providence, RI 02903.

(3) Contents. -- A complaint shall contain, as a minimum, the following information:

(a) The full name and address of the person/entity making the complaint.
(b) The full name and address of the person against whom the charge is made.
(c) A concise statement of the facts that form the basis for the complaint.
(d) Identification of the specific medical protocols and/or statutes which are alleged to have been violated.
(e) The date(s) of the alleged violation(s), or if the alleged violation(s) is of a continuing nature, the dates between which said continuing violation(s) has/have occurred.

(4) Review. -- Upon receipt of a complaint in accordance with the foregoing requirements, the Administrator of the Medical Advisory Board shall review the complaint to determine whether the allegations are within the Medical Advisory Board's authority to investigate.

(a) If the complaint does not fall within the Medical Advisory Board's jurisdiction, the charge shall be dismissed and notice of the dismissal shall be sent to the complainant. The initial complaint and response shall be filed in a "not opened" complaint file and maintained in the Medical Advisory Board Office.

(b) If the complaint does fall within the Medical Advisory Board's jurisdiction, a case file shall be established.

(D) *Procedure*. --

(1) Notice letter. -- A letter shall be sent, return receipt requested, to the health care provider stating that a complaint or referral has been received by the Medical Advisory Board and identifying the alleged violation(s). A copy of the complaint shall also be enclosed.

(2) Response. -- The respondent shall submit a written response within fourteen (14) business days of receipt of the notice letter.

(a) The Medical Advisory Board will proceed with an investigation whether or not a response is submitted by the health care provider.

(b) The respondent may include in her/his response a request that a conference be held on the issue of mitigation.

(3) Pleadings. -- Pleadings shall be limited to a petition for discipline (i.e., complaint or referral) and response thereto.

(4) Preliminary Investigations. -- The Administrator shall conduct a preliminary investigation into matters under the Medical Advisory Board's jurisdiction. Such investigation shall be designed to obtain adequate information upon which the Medical Panel can determine whether a violation finding may be warranted.

(5) Medical Panels. –

(a) The Chairperson of the Medical Advisory Board shall appoint and designate a Medical Panel comprised of three (3) members of the Medical Advisory Board to review each complaint.

(b) The Medical Panel shall meet to review the results of the Administrator's preliminary investigation.

(c) The respondent may appear before the Medical Panel to discuss the case and may be accompanied by legal counsel.

(d) Subsequent to their review, the Medical Panel shall vote as to whether or not a violation has occurred.

(i) If the vote is unanimous, finding a violation, then the Medical Panel shall state its findings and sanctions and draft an Order which shall be transmitted to the Administrator.

(ii) If the vote is not unanimous, no sanctions shall be levied and the complaint shall be dismissed.

(e) The Administrator shall advise the respondent, pursuant to Rule 6.7(E)(6)(a) of the Workers' Compensation Court Rules of Practice, of the findings of the Medical Panel and any sanctions ordered.

(E) *Disqualification or Suspension Appeal*. --

(1) Time to Appeal. –

(a) If an Order of the Medical Panel disqualifies or suspends a health care provider, s/he may appeal the Order to the Medical Advisory Board within ten (10) working days of the entry of the Order by the Administrator. The appeal shall be in writing and mailed, return receipt requested, to the Administrator of the Medical Advisory Board. The date of receipt by the Medical Advisory Board and not the date of mailing shall be determinative.

(b) If no appeal is taken, the Order shall be considered a Final Order of the Medical Advisory Board.

(2) Form. -- The appeal shall contain, at a minimum, the following information:

(a) the full name and address of the health care provider requesting the appeal;

(b) a concise statement of facts and the reasons for the appeal;

(c) a copy of the Medical Panel's Order.

(3) Review on Appeal. – Members of the Medical Panel shall not participate with the Medical Advisory Board in reviewing the appeal.

(4) Representation. --

(a) When a respondent appears on her/his own behalf before the Medical Advisory Board in a formal proceeding, s/he shall file with the Medical Advisory Board an address at which any notice or other written communication may be served upon her/him as well as their telephone number.

(b) When a respondent is represented by counsel before the Medical Advisory Board in a formal proceeding, counsel shall file with the Medical Advisory Board a written notice of appearance which shall state counsel's name, Rhode Island attorney registration number, address and telephone number, and the name and address of the respondent on whose behalf counsel appears. The notice of appearance shall also contain the caption and file number of the subject proceeding. Any additional notice or other written communication required to be served on or furnished to a respondent shall be sent to counsel of record at counsel's address in lieu of transmission to the respondent.

(5) Continuances. --
(a) The Chairperson or an Acting Chairperson of the Medical Advisory Board may grant extensions of time in a formal proceeding where the continuance is for good cause, will not result in undue delay, and the failure to grant a continuance will result in undue hardship.
(b) No more than two (2) continuances will be granted to either the respondent or the Administrator of the Medical Advisory Board absent good cause shown.

(6) Service. --
(a) *By Medical Advisory Board*. -- Orders, notices and other documents originating with the Medical Advisory Board, including all forms of Medical Advisory Board action and other documents designated by the Medical Advisory Board for this purpose, shall be signed by the Chairperson and served by first class mailing, to the person at their address of record, except when service by another method shall be specifically required by these Rules.
(b) *By Respondent*. -- All pleadings, briefs and other documents filed by respondent with the Medical Advisory Board in formal proceedings shall be served upon the Office of the Administrator of the Medical Advisory Board. Such service shall be made by delivery in person or by first class mailing with postage prepaid.
(c) *Effect of Service Upon Counsel*. -- When a respondent is represented by counsel, service upon such counsel shall be deemed to be service upon the respondent.
(d) *Date of Service*. -- The date of service shall be the day when the document served is deposited in the United States mail or is delivered in person; except as to pleadings or other documents required or permitted to be filed with the Medical Advisory Board as provided in 6.7(C)(1), 6.7(D)(2) and 6.7(E)(1)(i) of these Rules. A postmark shall be determinative of the day of deposit in the United States mail.
(e) *Proof of Service*. -- When service is required to be made, there shall accompany and be attached to the original a certificate of service substantially in the following form:

Certificate of Service.
I hereby certify that I have this day served by (indicate method of service) the foregoing document upon all parties of record in this proceeding.
Dated this __ day of _____, 20__.

_____
Signature

(7) Appearances. -- The Medical Advisory Board requires counsel for all parties to enter their appearance.

(8) Order of Procedure. -- In proceedings upon a petition for discipline, the Administrator of the Medical Advisory Board shall have the burden of proof, shall indicate the specific acts of misconduct alleged, the specific protocols violated and all other evidence demonstrating a violation of the Rhode Island General Laws. The Administrator may also present rebuttal evidence. These proceedings shall not be open to the public; however the final order and decision of the Medical Advisory Board are available for viewing in accordance with subsection (10) herein.

(a) *Presentation by the Parties*. –

(i) General Rule. – The respondent and the Administrator of the Medical Advisory Board shall have the right to present relevant facts and arguments in support of their respective positions. The proceedings shall proceed with all reasonable diligence and with the least practicable delay.

(ii) Objections. – Any objections to the admission of factual material or any procedural objections shall be on the record and the grounds upon which the objection is based shall be specifically stated. The Medical Advisory Board Chairperson or her/his designee shall rule on all objections made.

(b) *Witnesses*. -- The Chairperson of the Medical Advisory Board or her/his designee may limit the number of witnesses who may be heard in order to eliminate unduly repetitious or cumulative testimony without prejudice to the substantive rights of any party.

(c) *Additional Evidence*. -- At the hearing, the Chairperson of the Medical Advisory Board or her/his designee may authorize any participant to file specific documentary evidence as a part of the record within a fixed time.

(d) *Transcript*. -- Hearings shall be recorded by a reporter designated by the Medical Advisory Board. The transcript shall include a verbatim report of the hearings with no omissions and shall be the sole official transcript of the proceeding.

(i) After the close of the record, no additional evidence or document shall be considered.

(ii) Corrections in an official written transcript may be allowed only in order to conform to the evidence presented at the hearing. No corrections shall be made to an official written transcript of the hearing, except as provided in this section. Transcript corrections agreed to by all parties may be incorporated into the record if and when approved by the Medical Advisory Board at any time during the hearing or after the close of the hearing.

(iii) The Medical Advisory Board will cause to be made available a stenographic record of all Medical Advisory Board hearings of appeal under section 6.7 of these Rules. A respondent requesting a copy of the transcript may obtain a copy at their own expense.

(e) *Stipulations*. -- The participants may stipulate to any relevant facts or to the authenticity of any documents. Stipulations shall be binding on the participants.

(f) *Evidence*. --

(i) Admissibility. -- The petition for discipline and answer shall not be considered as evidence unless offered and received as evidence in accordance with these rules.

(ii) Objections to Evidence. -- In the event there is an objection to any evidence being proffered, objections shall be on the record and the grounds upon which the objection is based shall be specifically stated. The Chairperson of the Medical Advisory Board or her/his designee shall rule on all objections made.

(g) *Conferences*. -- Conferences between the participants to expedite the proceeding may be held at any time prior to or during hearings.

(9) Filing or Determination. -- The Medical Advisory Board shall submit a written decision of its action setting forth the specific violations found and the sanctions to be assessed, if any.
(a) Copies of the decision of the Medical Advisory Board shall be served on the respondent and the Administrator of the Medical Advisory Board.
(b) Upon receipt of the decision of the Medical Advisory Board, the Administrator of the Medical Advisory Board shall advise the respondent of any sanctions ordered.
(c) The Final Order of the Administrator shall be sent by first class mailing to the respondent, the complainant and to the appropriate licensing authority.
(d) The Medical Advisory Board may petition the Workers' Compensation Court to enforce any Final Order.

(10) Access to Records. -- All investigatory records of the Medical Advisory Board shall not be open to the public. Records of the Final Order and Decision of the Medical Advisory Board are available to members of the public at the Office of the Administrator of the Medical Advisory Board.

(11) Appeal to the Workers' Compensation Court. -- The respondent may appeal the Medical Advisory Board's decision to disqualify or suspend as provided by statute. Rule 2.31 of the Workers' Compensation Court Rules of Practice shall be followed.

6.8 PREFERRED PROVIDER NETWORKS (hereinafter PPN). -- (A) *Purpose*. -- R.I.G.L. § 28-33-8 provides: "[I]f the insurer or self-insured employer has a preferred provider network approved and kept on record by the medical advisory board, any change by the employee from the initial health care provider of record shall only be to a health care provider listed in the approved preferred provider network." Injured workers in the State of Rhode Island retain their right to choose their first health care provider. The PPN is utilized when the injured worker wishes to change from the original treating health care provider to another health care provider.

(B) *Requirements for Approval*. -- (1) The PPN must offer a sufficiently wide selection of qualified physicians and other appropriate health care providers in various fields to allow adequate choice to the injured worker and to assure that the health care providers will be readily available to provide the service required.

(2) There must be geographic diversity of health care providers in the PPN to allow for patient convenience. This diversity is of greater importance for health care providers in categories that will, in general, provide the most care; i.e., orthopedics, general surgery, neurosurgery, physiatry, chiropractic, family practice, podiatry, etc. There must be a multiple choice of health care providers who will provide other special services to the injured workers; i.e., opthalmologists, neurologists, urologists, psychologists, psychiatrists, etc.

(3) The size of the PPN must reflect the number of employees served by that specific PPN and the geographic distribution of the units of the facility utilizing an individual PPN.

(C) *Application Contents*. -- The applicant requesting approval of a PPN must provide the following:

(1) a cover letter requesting approval of the proposed PPN;

(2) the applicant's signed acknowledgement that it will comply with the requirements of R.I.G.L. § 28-33-8;

(3) the names, business addresses and telephone numbers of each health care provider who has signed an authorization to be included in the proposed PPN. The health care providers should be listed by category of specialty;

(4) if the health care provider is employed by or under contract with the insurer, self-insurer or group self-insurer, the organization shall set forth the nature of the contract or agreement and the frequency and regularity with which the organization calls upon the expertise of said health care provider, if applicable;

(5) the geographic areas proposed to be covered by the network as it relates to the facility operated by the employer;

(6) a demographic page showing what percentage of the employees live in what communities in the state, i.e., 50% in Providence, 25% in Kent County, etc.;

(7) an injury history may be presented to demonstrate the types and quantity of injuries incurred by employees during the preceding two (2) years. This information will aid the Medical Advisory Board in determining if there is sufficient choice of health care providers;

(8) copies of all contracts related to the creation or management of the proposed PPN with, by, and/or between the applicant and any third-party administrator, preferred provider organization, health care provider or other entity involved in the administration of the proposed PPN. Proprietary information contained in said contracts may be redacted;

(9) a signed authorization from each health care provider on the proposed PPN must be filed by the insurer or self-insured employer at the time of the filing of the application. A copy of the form to be utilized is appended to these Rules as Exhibit 3.

Contents of said applications are proprietary in nature and not available for public viewing.

<u>Reporter's Notes.</u> – In reference to Rule 6.8(C)(8), contracts submitted as part of an application will be reviewed to ensure compliance with R.I.G.L. § 28-33-8 which states: "any contract proffered or maintained which restricts or limits the health care provider's ability to make referrals pursuant to the provisions of this section, restricts the injured employee's first choice of health care provider, substitutes or overrules the treatment protocols maintained by the medical advisory board or attempts to evade or limit the jurisdiction of the workers' compensation court shall be void as against public policy."

(D) *Procedures for Approval*. -- (1) The PPN application must be submitted by the insurer or self-insured employer who wishes to utilize a PPN in providing care for injured employees. It is not acceptable for a group of self-insured employers who are represented by a single third-party administrator to submit a single network for the group.

(2) Incomplete applications will be returned to the applicant with an explanation as to why the application is incomplete. Should the insurer/self-insured employer not respond to this

notification further as directed, the Administrator may, at her/his discretion, bring the application to the Medical Advisory Board for a final vote of approval or denial.

(3) Upon receipt of a complete application as outlined in Section 6.8 of the Workers' Compensation Court Rules of Practice, the application will be placed on the agenda of the next meeting of the Medical Advisory Board for a vote to either approve or deny the application.

(E) *Consideration and Vote by the Medical Advisory Board.* -- (1) Representatives of the proposed PPN may appear before the Medical Advisory Board to answer any questions and present any additional information.

(2) After reviewing and discussing the proposed PPN, the Medical Advisory Board may make recommendations and table its vote, or vote to approve or deny the application.

(3) A Medical Advisory Board member shall recuse from voting or discussion if that member, a business associate, employer, or family member appears on the proposed network. However, when a majority of the Medical Advisory Board members must recuse themselves from consideration of a PPN, then, pursuant to the "Rule of Necessity" exception, the number of affected members necessary to establish a majority/quorum may participate in the vote.

(F) *Approval of the PPN by the Medical Advisory Board*. -- (1) Upon approval, the PPN will be kept on file at the Medical Advisory Board Office.

(2) The insurer/self-insured employer shall post the PPN at each place of business and shall provide each employee with a copy of the PPN. In extreme circumstances, individual notification may be waived pending prior approval by the Administrator of the Medical Advisory Board.

(3) Should any changes occur within the PPN after approval by the Medical Advisory Board, the representative of the insurer/self-insured employer shall file a notice of such change within thirty (30) days with the Medical Advisory Board. Substantial changes may require further approval by the Medical Advisory Board.

(G) *Non-approval of the PPN by the Medical Advisory Board*. -- (1) If the Medical Advisory Board does not approve the PPN, the insurer/self-insured employer will be notified as to the additional information or changes that may be needed to effectuate approval of the PPN.

(2) Submission of this additional information or execution of changes shall be accomplished as further directed by the Administrator of the Medical Advisory Board.

(3) Failure to submit this additional information or execution of changes as further directed may result in the Administrator moving for a final vote of approval or denial of the application in its current form.

(H) *Complaints, Disputes or Appeals Regarding Preferred Provider Networks*. -- (1) The Chief Judge of the Workers' Compensation Court may review and/or settle any complaints or disputes regarding any PPN.

(2) If the Chief Judge is unable to resolve any complaint or dispute, the aggrieved party may file an appeal to the Workers' Compensation Court pursuant to Rule 2.31 of the Workers' Compensation Court Rules of Practice.

Reporter's Notes. -- **The Medical Advisory Board has existed and operated under these Rules since its inception in 1992. These Rules have been modified over the years to ensure the provision of high quality medical care to injured workers, while preventing unnecessary delay in return to work or excessive costs to the system. The Medical Advisory Board was created pursuant to R.I.G.L. § 23-30-22 as a branch of the Workers' Compensation Court. The Rules of Procedure of the Medical Advisory Board have been incorporated into the Workers' Compensation Court Rules of Practice. This incorporation will assist all parties appearing before the Medical Advisory Board. These Rules clearly detail the hearing process and specifically note compliance with Rule 2.31 in regard to appeals made to the Workers' Compensation Court.**

The terms health care providers, medical service providers and health service providers are used interchangeably in these Rules and are considered to be any persons who have provided health care services to injured workers.

Exhibit 1

Rhode Island Workers' Compensation Court
Impartial Medical Examiner or Health Care Review Team Participant

Application/Renewal

Please complete, sign, and return with CURRENT CURRICULUM VITAE to Medical Advisory Board, Workers' Compensation Court, One Dorrance Plaza, Providence, R.I. 02903.

APPLICATIONS NOT FULLY COMPLETED WILL BE RETURNED!!!

Please Type or Print: Name: _____
Address: _____
_____
Telephone: _____

1. Degree: _____ 2. Board of Registration Number: _____
3. Current practice status: Active _____ Inactive _____
4. Malpractice insurance current: Yes _____ No _____ Insurer: _____
   Amount of Insurance _____
5. Board Certification? Yes _____ No _____ OR Board Qualified? Yes _____ No _____
6. Primary Specialty: _____
7. Current staff appointment at accredited organization? Yes _____ No _____
   List Organization(s): _____
8. Have you evaluated workers' compensation claimants as an IME during the past 12 months?
   Yes _____ No _____
9. Indicate any disciplinary/malpractice actions, past or present, filed against you. Attach separate sheet if necessary.
   _____
   _____

*** Note: Please be specific. Answer this question either "none" or "yes" with an explanation**.

10. Have you ever been convicted of a felony? Yes _____ No _____
    If yes, please explain: _____
    _____
11. Are you under contract with or regularly employed or regularly retained by a compensation insurer or self-insured employer? Yes _____ No _____
    If yes, please list the insurer(s) or self-insured employer(s): _____
    _____
    _____

_____ _____
Signature of Applicant Date

Exhibit 2

REPORT OF INDEPENDENT HEALTH CARE REVIEWER/REVIEW TEAM

History of present illness

Job description

Past medical history

Physical examination

Review of X-ray and/or other testing

Diagnosis

Causal relationship

Records reviewed

Comparison of records reviewed with your findings

Prognosis

DISABILITY – no disability, partial disability, total disability

(No disability) Able to return to former job without restrictions.
(Partial disability) Able to return to modified job with the following restrictions.
(Total disability) Unable to return to any work at this time.

Has MAXIMUM MEDICAL IMPROVEMENT (MMI) been reached – yes or no

If no, treatment recommendations to reach MMI and date expected to reach MMI.

If yes, degree of functional impairment according to the latest AMA guidelines

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HAS THE TREATING PHYSICIAN COMPLIED WITH THE MEDICAL ADVISORY BOARD PROTOCOL?

Yes or No

If no, explain.

MAB05 (6/92) Informational

Exhibit 3

Insurer/Self-Insured Employer:

_____

Provider's Name & Address:

_____

_____

_____

_____

I, (Dr.'s name)

_____, do acknowledge my participation in the Preferred Provider Network for the above-named company.

Doctor's signature _____

Date _____

*** NOTE FOR DOCTOR'S OFFICE STAFF: Please complete and return to the above-captioned company within TEN DAYS of receipt of this form. Thank you in advance for your cooperation.

The undersigned acknowledge that:

- An injured employee shall have freedom of choice to obtain health care, diagnosis, and treatment from any qualified health care provider initially;

- The employee's first visit to any facility providing emergency care or to a physician or medical facility under contract with or agreement with the employer or insurer to provide priority care shall not constitute the employee's initial choice to obtain health care, diagnosis or treatment;

- The initial health care provider of record may, without prior approval, refer the injured employee to any qualified specialist for independent consultation or assessment, or specified treatment. If the insurer or self-insured employer has a Preferred Provider Network approved and kept on record by the Medical Advisory Board, any change by the employee from the initial health care

provider of record shall only be to a health care provider listed in the approved Preferred Provider Network. If the employee seeks to change to a health care provider not in the approved Preferred Provider Network, the employee must obtain the approval of the insurer or self-insured employer;

- Compensation for medical expenses and other services is due and payable within twenty-one (21) days from the date a request is made for payment of these expenses. The twenty-one (21) day period begins on the date the insurer receives a request with appropriate documentation required to determine whether the claim is compensable and the payment requested is due;

- The Medical Advisory Board has established Protocols and Standards of Care for the treatment of work related injuries that have been formally approved and adopted by the Chief Judge of the Workers' Compensation Court. It is further understood that the Protocols and Standards of Care are in no way intended to be, nor are they to be used as a binding rule or regulation. The Protocols and Standards of Care are intended to outline options of appropriate methods and types of intervention to be utilized by physicians and other health care providers for what is believed to be some of the most frequent work-related injuries seen in Rhode Island.

- Any unresolved dispute between a provider and (Signatory(s)) as to the reasonableness of the amount of any charge and/or payment for medical, dental, or hospital services or for medicines or appliances shall be determined by the Workers' Compensation Court;

- Disputes other than those pertaining to hospitalizations, medical services, appliances, or medicine, as outlined above, shall also be heard and determined by the Workers' Compensation Court in accordance with R.I.G.L. 28-30-1, et seq. and the Protocols and Standards of Care established by the Medical Advisory Board.

_____

(Insurer/Self-Insured Employer)

*Please note: Any third-party administrator, PPO or any other entity involved in the administration of the proposed PPN, related to the creation or management of the proposed PPN must also be a signatory to this acknowledgement.